

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Broadcast Localism	)	MB Docket No. 04-233
	)	

**REPORT ON BROADCAST LOCALISM  
AND NOTICE OF PROPOSED RULEMAKING**

**Adopted: December 18, 2007**

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**Comment Date: (30 days after publication in the Federal Register)**

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By the Commission: Chairman Martin and Commissioner Tate issuing separate statements;  
Commissioners Copps and Adelstein concurring in part, dissenting in part,  
and issuing separate statements; Commissioner McDowell approving in part,  
concurring in part, and issuing a statement.

**TABLE OF CONTENTS**

<b><u>Heading</u></b>	<b><u>Paragraph No.</u></b>
I. INTRODUCTION .....	1
II. BACKGROUND .....	4
III. DISCUSSION.....	11
A. COMMUNICATION BETWEEN LICENSEES AND THEIR COMMUNITIES .....	11
1. Issues .....	11
2. Public Comments.....	13
3. Issues for Commission Action.....	16
B. NATURE AND AMOUNT OF COMMUNITY-RESPONSIVE PROGRAMMING .....	30
1. Issues .....	30
2. Public Comments.....	31
3. Issues for Commission Action.....	40
C. POLITICAL PROGRAMMING .....	56
1. Issues .....	56
2. Public Comments.....	59
3. Issues for Commission Action.....	67
D. UNDERSERVED AUDIENCES .....	70
1. Issues .....	70

2. Public Comments.....	71
3. Issues for Commission Action.....	73
E. DISASTER WARNINGS .....	82
1. Issues .....	82
2. Public Comments.....	84
3. Issues for Commission Action.....	87
F. NETWORK AFFILIATION RULES.....	89
1. Issues .....	89
2. Public Comments.....	92
3. Issues for Commission Action.....	95
G. PAYOLA / SPONSORSHIP IDENTIFICATION .....	98
1. Issues .....	98
2. Public Comments.....	104
3. Issues for Commission Action.....	108
H. LICENSE RENEWAL PROCEDURES .....	114
1. Issues .....	114
2. Public Comments.....	116
3. Issues for Commission Action.....	122
I. ADDITIONAL SPECTRUM ALLOCATIONS .....	126
1. Issues .....	126
2. Public Comments.....	130
3. Issues for Commission Action.....	132
IV. CONCLUSION .....	143
V. ADMINISTRATIVE MATTERS .....	145
A. Initial Regulatory Flexibility Act Analysis .....	145
B. Initial Paperwork Reduction Act of 1995 Analysis.....	146
C. Ex Parte Rules .....	150
D. Filing Requirements .....	151
VI. ORDERING CLAUSES.....	157
APPENDIX A- Principal Commenters and Reply Commenters	
APPENDIX B- Initial Regulatory Flexibility Analysis	

## I. INTRODUCTION

1. This Report on Broadcast Localism and Notice of Proposed Rulemaking (the “Report”) provides an overview of the record in this docket, and our conclusions as the result of our review of that record. It also describes actions that we have taken or intend to take in this and the other ongoing Commission proceedings that we reference to ensure that broadcasters are appropriately addressing the needs of their local communities. Finally, the Report includes a Notice of Proposed Rulemaking which seeks public comment on certain issues related to several of these actions that we propose to take. As described below, the voluminous record here demonstrates that some broadcasters devote significant amounts of time and resources to airing “programming that is responsive to the needs and interests of their communities of license.”<sup>1</sup> At

<sup>1</sup> *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 ¶ 1 (2004) (the “*NOR*”).

the same time, in written comments and testimony received during six related field hearings, many other commenters have raised serious concerns that broadcasters' efforts, as a general matter, fall far short from what they should be. Specifically, the record indicates that many stations do not engage in the necessary public dialogue as to community needs and interests and that members of the public are not fully aware of the local issue-responsive programming that their local stations have aired.<sup>2</sup> Against this backdrop, the Commission proposes certain changes to its rules and policies that will promote both localism and diversity. We also discuss ways to encourage broadcasters to improve programming targeted to local needs and interests, and to provide more accessible information about those on-air efforts to the people in their communities.

2. The Report focuses in particular on broadcaster efforts to provide community-responsive programming such as news and public affairs, and programming targeted to the particular needs or interests of certain segments of the public.<sup>3</sup> Because the centerpiece of localism is the communication between broadcasters and the members of the public that they are licensed to serve, the Report also addresses current efforts undertaken by both broadcasters and the Commission itself to make relevant information concerning broadcasters' efforts to serve their communities readily available to the public. The record here suggests that the dialogue between broadcasters and their audiences concerning stations' localism efforts is not ideal. Similarly, it is apparent that many listeners and viewers know little about Commission processes, such as the agency's review of license renewal applications and its complaint procedures, which allow the public to effectively raise concerns about broadcasters' performance.

3. Given the record, we conclude that modification of certain of our rules, policies and practices may be necessary to address the deficiencies of many broadcasters in meeting their obligation to serve their local communities. These proposed changes are intended to promote localism by providing viewers and listeners greater access to locally responsive programming including, but not limited to, local news and public affairs matter. The proposed modifications are also designed to promote diversity by increasing and expanding broadcast ownership opportunities for minority- and women-owned businesses and small businesses. As a result, the actions discussed herein will allow greater diversity in what is seen and heard over the airwaves, and ensure that communities have access to valuable, locally responsive programming.

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<sup>2</sup> See, e.g. Testimony of Martin Kaplan, Associate Dean, Annenberg School for Communication, University of Southern California (delivered by Joseph Salzman, Associate Dean, Annenberg School for Communication) (Monterey Tr. 63-68).

<sup>3</sup> The *NOI* specifically excluded from consideration in this inquiry the subject of the Commission's structural broadcast ownership rules. *NOI*, 19 FCC Rcd at 12427 ¶ 5. These rules are considered in *2006 Quadrennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 06-121); *2002 Quadrennial Regulatory Review-Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 02-277); *Cross-Ownership of Broadcast Stations and Newspapers* (MM Docket No. 01-235); *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets* (MM Docket No. 01-317); *Definition of Radio Markets* (MM Docket No. 00-244); *Ways to Further Section 257 Mandate and To Build on Earlier Studies* (MB Docket No. 04-228); *Public Interest Obligations of TV Broadcast Licensees* (MM Docket No. 99-360), Report and Order (adopted Dec. 18, 2007).

## II. BACKGROUND

4. In August 2003, the Commission launched a “Localism in Broadcasting” initiative to review, and possibly enhance, localism practices among broadcasters, which are designed to ensure that each station treats the significant needs and issues of the community that it is licensed to serve with the programming that it offers.<sup>4</sup> In addition to establishing procedures by which the Commission would study the state of broadcast localism and take any steps necessary to strengthen such efforts by licensees, on July 1, 2004, the Commission issued the *NOI* concerning localism. Through the *NOI*, the Commission sought direct input from the public on how broadcasters are serving the interests and needs of their communities; whether the agency needs to adopt new policies, practices, or rules designed directly to promote localism in broadcast television and radio; and, if so, what those policies, practices, or rules should be.<sup>5</sup>

5. The *NOI* observed that the concept of localism has been a cornerstone of broadcast regulation for decades. The concept derives from Title III of the Communications Act of 1934, as amended (the “Communications Act”), and is reflected in and supported by a number of current Commission policies and rules. Title III generally instructs the Commission to regulate broadcasting as the public interest, convenience, and necessity dictate, and Section 307(b) explicitly requires the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”<sup>6</sup> In carrying out the mandate of Section 307(b), the Commission has long recognized that “every community of appreciable size has a presumptive need for its own transmission service.”<sup>7</sup> The Supreme Court has stated that “[f]airness to communities [in distributing radio service] is furthered by a recognition of local needs for a community radio mouthpiece.”<sup>8</sup>

6. The Commission has consistently held that, as temporary trustees of the public’s airwaves, broadcasters are obligated to operate their stations to serve the public interest—specifically, to air programming responsive to the needs and issues of the people in their communities of license.<sup>9</sup> The *NOI* noted that our broadcast regulatory framework is designed to foster a system of local stations that respond to the unique concerns and interests of the audiences within the stations’ respective service areas.<sup>10</sup>

7. The *NOI* also took note that, during the Commission’s 2002 review of its structural broadcast ownership rules, the agency received public comments indicating that many

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<sup>4</sup> *FCC Chairman Powell Launches “Localism in Broadcasting” Initiative*, News Release (Aug. 20, 2003), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-238057A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-238057A1.pdf).

<sup>5</sup> *NOI*, 19 FCC Rcd at 12427 ¶ 7.

<sup>6</sup> 47 U.S.C. § 307(b).

<sup>7</sup> *Pacific Broadcasting of Missouri LLC*, 18 FCC Rcd 2291, 2293 (2003) (quoting *Public Service Broadcasting of West Jordan, Inc.*, 97 F.C.C. 2d 960, 962 (Rev. Bd. 1984)).

<sup>8</sup> *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955).

<sup>9</sup> See, e.g., *NOI*, 19 FCC Rcd 12425 ¶1.

<sup>10</sup> *NOI*, 19 FCC Rcd at 12426 ¶ 2.

broadcasters may be failing to meet the needs of their local communities.<sup>11</sup> In response, the Commission opened this separate inquiry proceeding to seek input on a number of issues related to broadcast localism. Among them were questions as to how broadcasters are communicating with the communities that they serve and are serving the needs of those communities, including whether stations are airing a sufficient amount of community-responsive programming, such as news, political material and disaster warnings, as well as the state of their service to traditionally underserved audiences. It also sought comment on the relationship between networks and their affiliated stations, payola and sponsorship identification, the license renewal process and possible additional spectrum allocations. The *NOI* also asked whether, based on that analysis, the Commission should take action to ensure that licensees meet their localism obligations or, in the alternative, continue to rely on market forces and the existing issue-responsive programming rules to encourage broadcasters to meet their obligations.<sup>12</sup>

8. In addition to the *NOI*'s call for written comments, the Commission conducted six field hearings: in Charlotte, North Carolina (October 22, 2003); San Antonio, Texas (January 28, 2004); Rapid City, South Dakota (May 26, 2004); Monterey, California (July 21, 2004), Portland, Maine (June 28, 2007), and Washington, D.C. (October 31, 2007). During those hearings, attended by various commissioners and members of the Commission staff, the agency engaged in dialogue with industry and civic leaders, educators and broadcasters, as well as members of the public, to obtain information concerning the issues articulated in the *NOI*. The hearings included 86 formal presentations and remarks from community, interest group, and broadcaster representatives, as well as elected and appointed officials from state and federal governments. The proceedings also included testimony from 421 additional participants during "open microphone" sessions. The written materials and transcripts of the oral testimony gathered at those hearings have been placed into the record of this proceeding.<sup>13</sup>

9. As of December 2007, the Commission has received over 83,000 written submissions from commenters including broadcasters, broadcast industry organizations, public interest groups, and members of the public. Many broadcast entities submitted information with their comments outlining the process that each follows to determine the needs and interests of people within their respective communities of license. Licensee commenters also provided detailed data concerning the amount, nature, and variety of the programming that each airs to meet those needs and interests. A number of public interest organizations and educators submitted with their comments studies of various aspects of the nature and quality of local broadcast programming.

10. In the following section of this Report, we summarize the record of the comments and testimony amassed in this proceeding for each of the nine general localism areas of inquiry specified in the *NOI*: (1) communication between licensees and their stations' communities; (2) nature and amount of community-responsive programming; (3) political programming; (4) underserved audiences; (5) disaster warnings; (6) network affiliation rules; (7)

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<sup>11</sup> *Id.* at 12427 ¶ 5.

<sup>12</sup> *Id.* at 12427-28 ¶ 7.

<sup>13</sup> References to testimony received at the six localism hearings are made herein by the page(s) of the transcript of the hearing at which the testimony was given (*i.e.*, "Charlotte Tr. \_\_," "San Antonio Tr. \_\_," "Rapid City Tr. \_\_," "Monterey Tr. \_\_," "Portland Tr. \_\_," or "Washington, D.C. Tr. \_\_").

payola/sponsorship identification; (8) license renewal procedures; and (9) additional spectrum allocations. We then provide our analysis of the pertinent record, and note those areas where we conclude that revision of our rules, procedures, and policies is called for to ensure that broadcasters effectively meet the needs and problems of their communities with the programming that they air. With regard to some areas of concern, we conclude that additional information and guidance is necessary before we so act, and pose certain questions for comment by members of the public.<sup>14</sup>

### III. DISCUSSION

#### A. COMMUNICATION BETWEEN LICENSEES AND THEIR COMMUNITIES

##### 1. Issues

11. As noted in the *NOI*, in the past, the Commission formally regulated the manner in which broadcasters obtained input from their local communities regarding matters of local interest, in order to ensure that they air programming that responded to those interests. Through its “ascertainment” requirement, the Commission directed broadcasters to comply with detailed procedures for determining the problems, needs, and interests of their communities.<sup>15</sup> In addition, the Commission required licensees to maintain programming logs, which broadcasters used to inform their communities about how they serve the public interest, for purposes of program planning, and to ensure compliance with program oversight by the Commission.<sup>16</sup> In the 1980s, the Commission eliminated these requirements, first for radio (in 1981), and then for television (in 1984), concluding that market forces, in conjunction with the imposition of an issue-responsive programming documentation obligation and the petition to deny process, could be relied upon to ensure that broadcasters aired programming responsive to the needs and interests of their communities.<sup>17</sup> The Commission indicated that it would no longer regulate how a broadcaster determined those needs and interests, and would require only that a station maintain issues/programs lists of its most significant treatment of community issues, updated quarterly, in its public inspection file.<sup>18</sup>

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<sup>14</sup> Commenters should confine their submissions to the specific issues for which comment is sought herein. With regard to the issues raised in the other ongoing or contemplated Commission proceedings discussed in this Report, because those matters will be resolved with the record of each such proceeding, they should not be addressed in comments filed in the above-captioned rulemaking proceeding.

<sup>15</sup> See generally, *Primer on Ascertainment of Community Problems by Broadcast Applicants*, Report and Order, 27 F.C.C. 2d 650 (1971); *Ascertainment of Community Problems by Broadcast Applicants*, First Report and Order, 57 F.C.C. 2d 418, 442 (1976) (“*Renewal Primer*”).

<sup>16</sup> See, e.g., *Amendment of Section 3.663(a) (Now § 73.670), the Program Logging Rules for Television Broadcast Stations*, Report and Order, 5 F.C.C.2d 185 (1966); *Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees*, Notice of Proposed Rule Making, 87 F.C.C.2d 716, 721 ¶ 12 (1981).

<sup>17</sup> See *Deregulation of Radio*, Report and Order, 84 F.C.C.2d 968, 997-98 (1981) (“*Radio Deregulation Order*”); *Revision of Programming and Commercialization Policies, Ascertainment Requirements and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 F.C.C. 2d 1075, 1099 (1984) (“*Commercial Television Deregulation Order*”).

<sup>18</sup> See *Radio Deregulation Order*, 84 F.C.C.2d at 1009-10 ¶¶ 103-05; *Commercial Television Deregulation Order*, 98 F.C.C.2d at 1107-08 ¶ 71. See also 47 C.F.R. §§ 73.3526(e)(11)(i) (commercial television issues/program lists);



12. The Commission has continued to monitor the manner by which broadcasters receive local community input. In the *DTV Public Interest NOI*, the Commission discussed the requests of certain groups that the agency more closely regulate the way in which television broadcasters determine the needs and interests of their communities and report on how they fulfill those needs and interests.<sup>19</sup> Based on the comments received, the Commission released the *Enhanced Disclosure NPRM*, which proposed to replace the issues/programs lists with a standardized form.<sup>20</sup> As discussed in more detail below, by Report and Order adopted on November 27, 2007, the Commission adopted a form that requires television licensees to report on their efforts to identify the programming needs of various segments of their communities, and to list their community-responsive programming broadcast, by category.<sup>21</sup> The *Enhanced Disclosure Order* also requires that such licensees make these forms, as well as most of the rest of their station public inspection files, available on the Internet, for access by members of the public at no charge.<sup>22</sup> As discussed *supra*, in the *NOI*, the Commission sought comment on other steps, beyond those contemplated in the *Enhanced Disclosure NPRM* and *DTV Public Interest NOI*, that the Commission could take to improve broadcasters' communication with their communities. The *NOI* also asked how effectively market forces have fulfilled the goal of ensuring that broadcasters air programming responsive to the needs and interests of their communities.<sup>23</sup>

## 2. Public Comments

13. The record before us concerning broadcaster efforts to effectively communicate with their audiences about local issues is decidedly mixed. Comments indicate that some broadcasters engage in substantial, inventive, and ongoing efforts to identify the needs and interests of the members of their communities of license as a first step in formulating and airing locally oriented, community-responsive programming that will meet those needs.<sup>24</sup> Many licensees feel that current efforts have achieved the goal of ensuring that they air programming

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73.3526(e)(12) (commercial radio issues/programs lists); 73.3527(e)(8) (noncommercial radio and television issues/programs lists).

<sup>19</sup> See *Public Interest Obligations of TV Broadcast Licensees*, Notice of Inquiry, 14 FCC Rcd 21633, 21640-41 ¶ 15 (“*DTV Public Interest NOI*”).

<sup>20</sup> See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Notice of Proposed Rule Making, 15 FCC Rcd 19816, 19819-22 ¶¶ 7-14 (2000) (“*Enhanced Disclosure NPRM*”).

<sup>21</sup> See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order (adopted Nov. 27, 2007) (“*Enhanced Disclosure Order*”).

<sup>22</sup> See *id.*

<sup>23</sup> *NOI*, 19 FCC Rcd at 12429 ¶ 11.

<sup>24</sup> At the localism field hearings, many local officials commended their area broadcasters for their interaction with their communities and provision of locally oriented programming. See, e.g., Testimony of Doug Echols, Mayor, Rock Hill, South Carolina (Charlotte Tr. 80-82); Testimony of Daniel Albert, Mayor, Monterey, California (Monterey Tr. 32-36); Testimony of Jim Shaw, Mayor, Rapid City, South Dakota (Rapid City Tr. 28-33); Testimony of Aimee Turner, Maine Center for Disease Control and Prevention, Maine Department of Health and Human Services (Portland Tr. 95-96); Testimony of Dan Paradee, Public Affairs Manager, Maine Turnpike Authority (Portland Tr. 147-49); Letter from Robin Chibroski, Executive Director, Ronald McDonald House of Portland, Maine (June 28, 2007).

responsive to the needs and interests of their communities.<sup>25</sup> As reported by the broadcasters themselves, examples of their efforts include the following:

- Fox stations participate in formal ascertainment meetings sponsored by their respective state broadcasters associations at which community leaders, local politicians, executives of non-profit organizations, representatives of minority groups, and public interest advocates share with broadcasters the issues that they believe to be important with them. Many Fox stations also engage in less formal efforts, such as holding meetings at their studios with community leaders, maintaining telephone and e-mail lines of communication, and employing station public affairs directors who serve as community liaisons.<sup>26</sup>
- CBS' KEYE-TV, Austin, Texas, holds monthly meetings with representatives of industry, non-profit organizations, government, community leaders, and the general public to identify matters that station programming should address.<sup>27</sup>
- Station KWEX-TV, San Antonio, Texas, a Univision Spanish-formatted station, engages in ongoing discussions throughout the year with community leaders and members of the public. On average, the station conducts over 80 face-to-face interviews each year to determine the issues most important to the people of San Antonio. It takes into consideration the information gleaned from these interviews, as well as data from other sources, in making programming decisions.<sup>28</sup>
- Univision's KCOR(AM), San Antonio, Texas, provides an e-mail address and phone number during its public affairs programming that allow listeners to contact the station and communicate with its personnel about issues of importance to the community. Its WGBO-TV, Joliet, Illinois, annually conducts 60-100 formal ascertainment interviews with local leaders, congressmen, business officials, public safety officials, educators, and representatives of non-profit organizations.<sup>29</sup>
- Station KINY(AM), Juneau, Alaska, licensed to Alaska-Juneau Communications, Inc., uses the Internet to encourage listener feedback on local community needs and interests. The station also regularly interviews business and government

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<sup>25</sup> See, e.g., Comments of Clear Channel Communications, Inc. (Nov. 1, 2004) ("Clear Channel Comments") at 29; Comments of Collegiate Broadcasters Inc. (Nov. 1, 2004) at 8.

<sup>26</sup> Comments of Fox Television Stations, Inc. and Fox Television Holdings, Inc. (Nov. 1, 2004) ("Fox Comments") at 9-10.

<sup>27</sup> Comments of Viacom, Inc. (Nov. 1, 2004) ("Viacom Comments") at Att. 1. After Viacom submitted its Comments in this proceeding, effective December 31, 2005, it effectuated a corporate reorganization that resulted in the change of the name of the parent of the licensees of all of its broadcast stations to CBS Corporation. For purposes of simplicity, we will refer to those stations herein as CBS stations.

<sup>28</sup> Testimony of Steve Guist, General Manager, KWEX-TV, San Antonio, Texas (San Antonio Tr. 46-50).

<sup>29</sup> Comments of Univision Communications, Inc. (Nov. 1, 2004) at 4.



leaders as part of a daily public affairs programming block. Listeners are provided time during a daily “Problem Corner” program to discuss issues that affect the community.<sup>30</sup>

- WTVD Television, LLC’s WTVD-TV, Raleigh-Durham, North Carolina, has “an organized minority board that gives the station guidance on issues regarding the minority community.”<sup>31</sup>
- KFMB-TV, San Diego, California, licensed to Midwest Television, Inc., asks viewers for story ideas, which has resulted in the airing of a variety of local features, including an investigation of a new skate park that was built along a main road having no safe crossing for children. Viewers also identified dangerous traffic areas in their neighborhoods, which resulted in a series of news stories investigating these areas and work with police and residents to slow traffic and correct those problems.<sup>32</sup>

14. In spite of these individual licensee efforts, many commenters see a need for additional efforts by broadcasters to identify the needs and interests of their communities of license. These proposals include the following:

- Elimination of the current issues/programs lists in favor of reinstating the formal ascertainment process, as discussed above, which allows stations “to get a real understanding of the needs of those we would be serving.”<sup>33</sup>
- Creation of advisory boards whereby stations regularly meet with community leaders and individuals from all sectors of the community.<sup>34</sup>
- Adoption of measures to increase public awareness of existing localism requirements with Commission-sponsored public service announcements, including an 800 number where consumers can find more information.<sup>35</sup>
- Providing for improved access to station decision-makers by the leadership of all local community groups.<sup>36</sup>

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<sup>30</sup> Comments of The Alaska Broadcasters Association (Nov. 1, 2004) at 3-4.

<sup>31</sup> Comments of The Walt Disney Company (Nov. 1, 2004) (“Disney Comments”) at 37.

<sup>32</sup> Comments of Joint Broadcasters (Nov. 1, 2004) at 17.

<sup>33</sup> Statement of Maynard Meyer, General Manager, and President, licensee of KLQP-FM, Madison, Minnesota (Oct. 20, 2006) at 2; Testimony of same (Rapid City Tr. 74).

<sup>34</sup> Statement of Joe Linson, Vice President of the San Antonio Branch of the NAACP (October 20, 2006); Testimony of same (San Antonio, Tr. 52-53) (“This would allow individuals from all sectors of the community to provide input and to help shape the message for their areas”).

<sup>35</sup> Comments of Brian Wallace (Aug. 18, 2004) at 7 (“[t]he FCC needs a much better way of requesting frequent input from the public. . . and [m]ake it easier for the public to communicate with the FCC, especially when it comes to making complaints”).

- Imposition of the requirement that the current issues/programs lists be placed on a station's website, and the use of a standardized form for the reporting of such information.<sup>37</sup>

15. As illustrated above, some licensees strive to actively ascertain the needs and interests of the communities they serve and air programming that reflects those needs and interests. However, in light of the critical testimony received, including that noted above, there is some question as to whether these practices have been widespread. Moreover, many members of the public are unaware of these obligations of broadcasters or of the crucial role that the public can play in the Commission's regulation of licensees. In sum, commenter recommendations of improving communication with their local stations include changes to the disclosure process, such as those taken in the *Enhanced Disclosure Order*; the formation and utilization of community advisory boards; and the consideration of a repeal of the rule changes that allow for unattended station operation. We also propose an update of the Commission's publication "The Public and Broadcasting," to include additional information of use to the public, as well as links to the Commission website at which members of the public may find more detailed information on particular topics of interest to them.

### 3. Issues for Commission Action

16. We agree with the commenters about the need to improve the communication between broadcast licensees and their local communities. Accordingly, we propose for comment several additional methods of improving that communication. Many of these proposals are consistent with commenter suggestions, as discussed above. However, we do not agree that all of those suggestions are feasible or necessary, such as reinstating the formal ascertainment process, which, as noted above, imposed specific and detailed formal procedures by which applicants and licensees were required to consult with community leaders to determine local needs and problems and propose programming to meet those issues.<sup>38</sup> Instead, we believe that Commission action in the following ways will assist further licensee-community communication and identification of community needs and interests. As detailed below, we will act immediately on others, such as updating "The Public and Broadcasting," our guide designed to assist

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<sup>36</sup> Testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey County (Monterey Tr. 48); Testimony of Gray Newman, Member, Mecklenburg Soil and Water Conservation Board (Charlotte Tr. 68-69); Testimony of "Davey D" (Monterey Tr. 112-22); Testimony of Charlie O'Douglas, Operations Manager, Rushmore Radio (Rapid City Tr. 160-61).

<sup>37</sup> Comments of Annenberg School for Communications, University of Southern California (Sept. 1, 2004) at 2-4 ("Annenberg Comments"); Comments of Arnold Wolf (Sept. 15, 2004) at 2. See also *Enhanced Disclosure Order; Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service*, Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10390 ¶¶ 116-17 (2007) ("*Digital Audio FNPRM*"), in the proceeding in which the Commission adopted the IBOC standard for digital broadcasting by AM and FM stations, seeking comment on application of the Enhanced Disclosure requirements to radio stations, operating in analog or digital.

<sup>38</sup> As noted in paragraph 9 the *NOI* and at paragraph 11 of this Report, in the 1980s, the Commission eliminated its formal ascertainment requirements, concluding that the benefits from the procedures did not justify the costs. Instead, the Commission indicated that the focus of its inquiry in the future "would be upon the responsiveness of a licensee's programming, not the methodology utilized to arrive at those programming decisions." See *NOI*, 19 FCC Rcd 12428-12429 ¶ 9; see also *Commercial Television Deregulation Order*, 98 F.C.C. 2d at 1100-01.

audiences in scrutinizing local stations' localism performance and adherence to our rules. For proposals for which more input is required, we call for public comment.

17. *"The Public and Broadcasting."* The record in this proceeding reveals that there is a substantial need for greater public understanding of broadcaster obligations, including serving the needs of the local community, and of the procedures by which the Commission enforces those obligations.<sup>39</sup> To provide this understanding, the Commission must better educate citizens about the tools available to them, should they conclude that their local broadcast stations are not fulfilling their service obligations.

18. The Commission's rules require each broadcast station to maintain in its public file, and to make available upon request, a copy of the Commission publication entitled "The Public and Broadcasting."<sup>40</sup> This document can provide an effective means by which to inform members of the public of the specific obligations of the stations that are licensed to serve them, and the various operating rules with which licensees must comply. It also can make viewers and listeners aware of Commission procedures and the tools at their disposal in the event that they conclude that any of their local stations do not meet these obligations. Moreover, the Commission's website contains substantial information similarly of use to the public, much in the form of easy-to-read guides concerning the broadcast renewal process, applicable deadlines, and complaint procedures, including links to sites at which complaints may be electronically filed. We direct the Media Bureau to update "The Public and Broadcasting" publication to include this information, as well as links to the Commission website at which the public may find more detailed information on particular topics.

19. We will also establish, refer to in "The Public and Broadcasting," and publicize on the Commission website and in other appropriate Commission publications, a contact point at the Commission, accessible over the Internet or via a toll-free telephone number, dedicated to providing information to members of the public regarding how they can become involved in the Commission's processes. We believe that having a point of contact at the Commission who can respond to inquiries and provide necessary information, such as the timing of the filing of license renewal applications for particular stations and details regarding our complaint procedures, will facilitate the public's understanding of broadcaster obligations and the procedures by which the Commission enforces those obligations.

20. *Enhanced Disclosure.* We agree with commenters' concerns regarding the inadequacy of the current limited disclosure by licensees of the locally responsive programming that they offer, and public access to such information. The record in this proceeding—

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<sup>39</sup> Commenters in the proceeding indicate that many members of the public are unaware of these obligations and of the Commission's processes. For example, in his November 1, 2004, Comments, Sam Brown indicated that the Commission's requirement that licensees maintain a detailed public file for interested members of the public is a meaningless administrative exercise that does not ensure local service because the average person does not know the files exist. Brian Wallace noted in his August 18, 2004, Comments that, until he had read the *NOI*, he was unaware that citizens may petition the Commission to deny a licensee's renewal application. He cited the need to educate the public as to when a particular license is up for renewal so that interested members of the public can become involved in the process.

<sup>40</sup> See 47 C.F.R. §§ 73.3526(e)(8); 73.3527(e)(7); *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, 15702 ¶ 24 (1998).

particularly that portion amassed during the series of public hearings conducted across the country—suggests that current disclosure is inadequate and many individuals may be unaware of the breadth of their community licensees’ locally oriented programming. This lack of knowledge apparently extends to the adequacy of so-called “issues/programs lists,” which broadcasters long have been required to compile and make available to the public, upon request.<sup>41</sup> Until recently, under the Commission’s rules, commercial and non-commercial educational television and radio licensees had to create, on a quarterly basis, “a list of programs that have provided the station’s most significant treatment of community issues during the preceding three month period.”<sup>42</sup> The rules, however, did not require that licensees list every program that may have contributed to localism during the relevant period, although, for those efforts that broadcasters did document, they were required to provide at least a minimum amount of specific information about each program, including air time and date and some indication of the community issue addressed. These lists were required to be placed in the station public inspection file.<sup>43</sup>

21. We agree with the commenters that these rules in this area are not sufficient. We therefore initiated the Enhanced Disclosure proceeding with the goal of adopting measures that would help to increase public awareness of licensee localism efforts. In that proceeding, the Commission sought comment on adoption of a standardized disclosure form, including a requirement to report specific information pertaining to local programming. As noted above, the *Enhanced Disclosure Order* made changes in the licensee programming reporting requirement, through the use of such a standardized form, to replace the current issues/programs lists. The form, which will be filed by television licensees on a quarterly basis, requires the disclosure of information with regard to the programming aired by the station during the previous three months. Such information must be provided and broken down for each of the following programming categories: national news, local news produced by the station, local news produced elsewhere, identifying the producing entity; local civic affairs, local electoral affairs, independently produced, other local, public service announcements, paid public service announcements, directed to underserved communities, religious, and closed captioning.<sup>44</sup> For each such program noted, the licensee must provide the program title, dates and times of airing and length of the program. It must also indicate whether it has undertaken any efforts to

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<sup>41</sup> As noted in paragraph 9 of the *NOI* and at paragraph 11 of this Report, in the 1980s, the Commission eliminated its formal ascertainment requirements, which required broadcasters comply with detailed procedures for determining the problems, needs and interests of their communities. In place of ascertainment, the Commission imposed the requirement that, on a quarterly basis, each broadcaster prepare and maintain, in its station public inspection file, an issues/programs list specifying the what community issues were given significant treatment by programs aired over the station during the past three months, and including specific information about each such program. The Commission concluded that this requirement, combined with market forces, would ensure that broadcasters provide locally oriented programming. See *NOI*, 19 FCC Rcd 12428-12429 ¶ 9, citing *Radio Deregulation Order*, 84 F.C.C. 2d at 997-998; *Commercial Television Deregulation Order*, 98 F.C.C. 2d at 1099.

<sup>42</sup> 47 C.F.R. § 73.3526(e)(11)(i) (commercial television); 73.3526(e)(12) (commercial radio); 73.3527(e)(8) (non-commercial educational radio and television).

<sup>43</sup> *Id.*

<sup>44</sup> See *Enhanced Disclosure Order*.

determine the programming needs of its community and has designed any programming based upon those identified needs.<sup>45</sup>

22. In the *Enhanced Disclosure Order*, the Commission also required that television licensees place most of the contents of their public inspection files, including any new enhanced disclosure forms, on the station's website, if one exists, or on the website of their state broadcasters association.<sup>46</sup> Internet access to such information will only improve the ability of members of the public to become educated as to broadcasters' efforts to serve them, thus prompting more active dialogue between licensees and their audiences concerning issues of public importance to local communities and how broadcasters might go about addressing those issues on the air—which may quickly lead to the airing of more responsive programming. The *Order* also requires that television stations notify viewers of the existence, location, and accessibility of their public files twice daily, during station identification announcements.<sup>47</sup> As noted *supra*, in our *Digital Audio FNPRM*, we have inquired as to whether radio licensees should also be subject to enhanced disclosure requirements.<sup>48</sup>

23. In addition to enhancing the dialogue between stations and members of the public, these measures will also help licensees document the kind of responsive programming that they have broadcast in a manner that is both understandable to the public and of use in the Commission's review of license renewal applications. The record here and in the *Enhanced Disclosure* proceeding suggests that many in the public do not understand the Commission's license renewal process or, more particularly, that the procedure affords listeners and viewers a meaningful opportunity to provide their input through the filing of a complaint, comment, informal objection, or petition to deny a renewal application.

24. *Renewal Application Pre- and Post-Filing Announcements.* In order to increase the public awareness of, and participation in our license renewal proceedings, we believe that we also should change the existing rules governing the so-called "pre-filing and post-filing announcements" that licensees must air in connection with their renewal applications,<sup>49</sup> and call for comment on these new measures. In addition to the existing requirement for on-air announcements about soon-to-be-filed and pending license renewal applications, we seek comment on whether we should require that the same information be posted on a licensee's website during the relevant months (*i.e.*, the posting begins on the sixth month before the license is due to expire and remains in place until after the deadline for filing petitions to deny the renewal application). We also seek comment on whether we should broaden the required language for these announcements contained in 47 C.F.R. § 73.3580(d)(4)(i), which currently provides the Commission's mailing address as a source of information concerning the broadcast

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<sup>45</sup> *Id.*

<sup>46</sup> Under the new Enhanced Disclosure requirements, a television licensee need not post its political file on the Internet, nor must it post "hard copy" letters received from the public as long as it includes them in its station's "hard copy" public file that it makes available for public inspection. In contrast, e-mailed letters must be posted, and also printed out and placed in the station public file. *See Enhanced Disclosure Order*.

<sup>47</sup> *See id.*

<sup>48</sup> *See, supra* note 37.

<sup>49</sup> 47 C.F.R. § 73.3580(d).



license renewal process, to include the agency's website address. Moreover, where technically feasible, we seek comment on whether a licensee's on-line provision of the Commission's web address could be linked directly to these places on the agency's website. We believe that such online posting is likely to be more accessible and understandable to the public than are the relatively few on-air announcements currently required, and we also request comment on these matters.

25. *Community Advisory Boards.* The Commission's former ascertainment requirement directed broadcasters to comply with detailed, formal procedures to determine the needs and interests of their communities, at the time that they initially sought their station authorizations, asked for approval to obtain a station, and sought license renewal. The record before us here shows that new efforts are needed to ensure that licensees regularly gather information from community representatives to help inform the stations' programming decisions, but we are not persuaded that the appropriate measure should be reinstatement of the former ascertainment mandates. As when the Commission eliminated those procedures in the 1980s, we do not believe that their potential benefits justify the costs. We do tentatively conclude, however, that the same fundamental objectives can be achieved through other means, including regular, quarterly licensee meetings with a board of community advisors and improved access by the public to station decision makers.

26. As noted *supra*, a number of licensee commenters have reported the benefits of community advisory boards in determining matters of local interest for broadcasters. We tentatively conclude that each licensee should convene a permanent advisory board made up of officials and other leaders from the service area of its broadcast station. We believe that these boards will promote both localism and diversity and, as such, should be an integral component of the Commission's localism efforts. Accordingly, we seek comment on this proposal. Will such community advisory boards be able to alert each broadcaster to issues that are important to its community of license? How should members of the advisory boards be selected or elected? Should the former ascertainment guidelines be a starting point to identify those various segments in the community with whom the licensees should consult?<sup>50</sup> How can the advisory boards be composed so as to ensure that all segments of the community, including minority or underserved members of the community, would also have an opportunity to voice their concerns about local issues facing the area? How frequently should licensees be required to meet with these advisory boards? We believe that, generally speaking, if a licensee already has formal groups in place with which it consults to determine the needs of its community, it should be deemed to have satisfied this requirement. We also seek comment on under what circumstances a licensee should be deemed to have satisfied this requirement with its current practices.

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<sup>50</sup> In its ascertainment Primer for broadcast renewal applicants, the Commission directed such applicants to consult, throughout their license terms, "a representative cross-section" of community leaders "who speak for the interests of the [station's] service area." It stated that the requirement may be met by interviews with leaders of the following institutions and elements found in the community: agriculture, business, charities, civic, neighborhood and fraternal organizations, consumer services, culture, education, environment, government (local, county, state and federal), labor, military, minority and ethnic groups, organizations of and for the elderly, organizations of and for women, organizations of and for youth (including children) and students, professions, public safety, health and welfare, recreation, and religion. See *Renewal Primer*, 57 F.C.C.2d at 442.



27. In addition, we recognize that additional, informal efforts to gather information from members of their communities could prove beneficial to licensees and, ultimately, the audiences that they serve. The record indicates that efforts such as the following have been successful for licensees:

- Some stations conduct formal or *ad hoc* listener or viewer surveys, by telephone, Internet, or other means.<sup>51</sup>
- Similarly, some broadcasters conduct focus sessions or “town hall” meetings with viewers and listeners to help prioritize issues to be covered through news, public affairs, public service, and special programming.<sup>52</sup>
- Station managers and other personnel also often sit on various boards, committees, councils and commissions, particularly in sparsely populated areas in which community functions depend on community participation in often voluntary public efforts.<sup>53</sup>
- Some licensees use dedicated telephone numbers, websites and e-mail addresses, publicized during programming, to facilitate community dialogue.<sup>54</sup>

We also call for comment on whether we should adopt rules or guidelines that encompass these approaches, or other similar efforts, for fostering better communication between licensees and their communities. We note that the standardized disclosure form recently adopted by the Commission will require broadcasters to describe any public outreach efforts undertaken during the reporting period.

28. *Remote Station Operation.* We agree with those commenters who expressed concern about the prevalence of automated broadcast operations, which allow the operation of stations without a local presence, and the perceived negative impact that such remote operation may have on licensees’ ability to determine and serve local needs. In 1987, the Commission eliminated its rule requiring a broadcast station to originate a majority of its non-network programming from its locally situated main studio.<sup>55</sup> This action was based, in part, on technical advances in the production and distribution of programming during the prior 35 years. In 1995, in response to continuing improvements in the stability of station monitoring and transmission equipment, the Commission authorized unattended technical operation of broadcast stations and expanded the ability of stations to control and monitor station technical operations from remote

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<sup>51</sup> See, e.g., Comments of the Alaska Broadcasters Association (Nov. 1, 2004) at 3-4.

<sup>52</sup> See, e.g., Comments of Gannett Broadcasting (Nov. 1, 2004) at 2-5.

<sup>53</sup> See, e.g., Reply Comments of the Arizona Broadcasters Association (Jan. 3, 2005) at 3.

<sup>54</sup> See, e.g., Comments of Univision Communications (Nov. 1, 2004) at 4.

<sup>55</sup> See *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215 (1987) (“*Main Studio R&O*”).

locations.<sup>56</sup> Although concerns were expressed that these rule revisions would result in stations operating on “auto-pilot with no one in charge,” the Commission concluded that the new rules would provide licensees with important flexibility, without adversely affecting the public interest.<sup>57</sup> Licensees have broadly embraced this new technical flexibility, and many stations now operate for extended periods without station personnel present at or near transmission facilities.

29. Recently, the Commission issued a Notice of Proposed Rulemaking regarding this issue, in connection with a public interest review of digital audio broadcasting. The Commission asked whether it should review its rules and determinations that facilitated the development of the automated radio broadcast operations described above. It also asked whether changes in remote radio operation should affect existing rules. Comments are still being received in that proceeding. We are considering requiring that licensees maintain a physical presence at each radio broadcasting facility during all hours of operation.<sup>58</sup> Requiring that all radio stations be attended can only increase the ability of the station to provide information of a local nature to the community of license. Particularly in the event of severe weather or a local emergency, such a requirement that all operations be attended may increase the likelihood that each broadcaster will be capable of relaying critical life-saving information to the public. Although parties have commented in that proceeding on this issue in the context of radio, we seek comment here on whether we should extend this requirement to television stations, as well as radio facilities.

## **B. NATURE AND AMOUNT OF COMMUNITY-RESPONSIVE PROGRAMMING**

### **1. Issues**

30. Having recognized that certain groups have long complained that broadcasters do not air enough community-responsive programming, the Commission sought comment on the nature and amount of such programming in the *NOI*. The Commission inquired as to how broadcasters were serving the needs of their communities, whether they were providing enough community-responsive programming, whether the Commission could or should take action to ensure that broadcasters aired programming that served their communities’ needs and interests, and whether non-entertainment or non-locally originated programming should constitute local programming. The Commission further sought comment on whether it should continue to rely on market forces to encourage broadcasters to air community responsive programming, such as news, political, and public affairs programming; whether it should distinguish between radio and television broadcasters; whether the profitability of local news production should be considered; and the frequency, length, and availability of broadcast public service announcements.<sup>59</sup>

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<sup>56</sup> See *Amendment of Parts 73 and 74 of the Commission’s Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements*, Report and Order, 10 FCC Rcd 11479 (1995).

<sup>57</sup> *Id.* at 11479-80 ¶¶ 5-7.

<sup>58</sup> *Digital Audio FNPRM* at 10391 ¶ 119. We note that we do not seek comment on this issue here; these issues will be resolved in the Digital Audio Broadcasting docket (MM Docket No. 99-325).

<sup>59</sup> *NOI*, 19 FCC Rcd at 12431-32 ¶¶ 14-18.

## 2. Public Comments

31. The record reveals that notable disparities exist among licensees with respect to the nature and amount of community-responsive programming that they air. Some broadcasters transmit substantial amounts of local news programming relevant to the issues that face their communities of license. In addition to breaking stories, many such broadcasts also include information concerning, crime, investigative features, consumer advocacy issues and segments focused on politics, sports and community events. Stations also provide vital weather information, particularly in emergency situations. Noteworthy examples of community-responsive programming, as self-reported by licensees,<sup>60</sup> include the following:

- CBS states that its owned stations air the following amounts of local news weekly: WFRV-TV, Green Bay, Wisconsin: 46.5 hours; KDKA-TV, Pittsburgh, Pennsylvania: 40 hours (30 percent of programming schedule); WJZ-TV, Baltimore, Maryland: 35 hours (21 percent of schedule); KUTV(TV), Salt Lake City, Utah: 38 hours; KYW-TV and WSPG-TV, Philadelphia, Pennsylvania: 47 hours (combined); and WBZ-TV and WSBK-TV, Boston, Massachusetts: 41 hours (combined).<sup>61</sup>
- Media General states that WJTV, Jackson, Mississippi, airs 9.5 hours per weekday of news, over half of which focuses on local stories.<sup>62</sup> Its WDEF-TV, Chattanooga, Tennessee, weekly airs 24.5 hours of local news, using a staff of almost 50 employees dedicated to local newsgathering and production.<sup>63</sup>
- Entercom's KNSS(AM), Wichita, Kansas, states that it produces "The Morning Newswatch," a three-hour block of local news each weekday named by the Kansas Broadcasters Association the best newscast in the state. The station also says it produces a six-minute news update that airs five times a day, and updates the weather twice an hour.<sup>64</sup>
- The Arkansas Broadcasters Association states that KHTS and KTHS-FM, Berryville, Arkansas, licensed to Jeri Lyn Broadcasting, Inc., each devotes 30 percent of its broadcast day to news and information programming, including news and community

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<sup>60</sup> We note that several commenters have criticized as inflated the broadcasters' self-reported estimates of the hours devoted to news and public affairs programming. Among other issues, critics call into question the quality of some programming categorized as news or public affairs, and they question whether time devoted to public service announcements or commercials should be included in the totals. *See, e.g.*, Comments of the Donald McGannon Communication Research Center (Oct. 28, 2004) ("McGannon Comments"); Testimony of Martin Kaplan, Associate Dean of the Annenberg School for Communications, University of Southern California (delivered by Joseph Salzman, Associate Dean, Annenberg School for Communication) (Monterey Tr. 62-68) (testifying that "[o]nly 44 percent of [local news] broadcasts contained any campaign coverage at all").

<sup>61</sup> Viacom Comments at 2-3.

<sup>62</sup> Comments of WJTV/Media General (Oct. 29, 2004) at 1.

<sup>63</sup> Comments of WDEF-TV/Media General (Oct. 29, 2004) at 1.

<sup>64</sup> Comments of Entercom Wichita License, LLC (Nov. 2, 2004) at Att. A.

bulletin board features, localized weather, emergency information, and coverage of education and the arts.<sup>65</sup>

32. Some commenters also state that broadcasters' newscasts are not limited to their reporting of ongoing local news stories. They indicate that they include in-depth, locally oriented investigative reports, health advice, crime reports, weather, sports, consumer advocacy, family issues, cultural events, business matters, and topics of importance to minorities. Examples reported by licensees include Belo's WWL-TV preemption of scheduled programming for "wall-to-wall" coverage of Gulf Coast hurricanes;<sup>66</sup> the efforts of Enchanted Air, Inc., licensee of KRTN and KRTN-FM, Raton, New Mexico, which broke away from local programming several years ago to keep listeners abreast of area forest fires and evacuation plans related to those events<sup>67</sup>; and hurricane-preparedness specials aired by Post-Newsweek's Florida and Texas-based stations and Raycom's WFLX(TV), West Palm Beach, Florida.<sup>68</sup>

33. The record further demonstrates that some broadcasters air a substantial amount of other local public affairs programming, including material involving education, minority issues, health matters, violence, consumer topics, women's issues, and religion. Some of this programming is stand-alone material; at other times, it is presented during segments within regularly scheduled newscasts. Illustrations, as self-reported by the broadcasters, include Clear Channel's Albany, New York, radio stations' airing of "Clear View," a weekly half-hour program that highlights community organizations and their positive impact upon the Albany community;<sup>69</sup> Gannett's WZZM-TV, Grand Rapids, Michigan, production of "Take Five Grand Rapids," a half-hour, live talk show that covers community news and public affairs issues;<sup>70</sup> and Sierra Broadcasting's KRNV-TV, Reno, Nevada, which airs three 30-minute public affairs programs: "Nevada Newsmakers," a show featuring local politicians and community figures; "Community Update," a program that airs daily between 10 a.m. and 5 p.m.; and "Lifelong Learning," a weekly program.<sup>71</sup>

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<sup>65</sup> Comments of Arkansas Broadcasters Association (Oct. 29, 2004) at 6.

<sup>66</sup> Comments of Belo Corp. (Nov. 1, 2004) ("Belo Comments") at 12-13; *see* other examples of similar programming at Testimony of Dr. William F. Duhamel, President, Duhamel Broadcasting Enterprises (Rapid City Tr. 48-52); NAB Comments at 18, Ex. C; Testimony of James M. Keelor, President and COO, Liberty Corporation (Charlotte Tr. 32-34); Viacom Comments at 3. It should be noted that the comment period in this proceeding predated the 2005 hurricanes that devastated areas of the Gulf Coast and Florida, and the wildfires that recently struck major parts of California, but we also note the substantial broadcaster public service efforts in the wake of those emergencies. *See, e.g.*, Testimony of Marcellus Alexander, Executive Vice President for Television, National Association of Broadcasters (Washington, D.C. Tr. 23-27).

<sup>67</sup> Comments of New Mexico Broadcasters Association (Nov. 1, 2004) at 5.

<sup>68</sup> Joint Broadcasters Comments, at 3, Att.

<sup>69</sup> Clear Channel Comments at 11.

<sup>70</sup> Comments of Gannett Broadcasting (Nov. 1, 2004) at 54.

<sup>71</sup> Comments of KRNV/News 4 Television (October 28, 2004) at 1.

34. While some commenters cite such examples as evidence that further regulation is unnecessary,<sup>72</sup> the record also reveals that others feel that broadcasters are not complying with their obligation, as public trustees, to air sufficient programming that is responsive to local needs and interests.<sup>73</sup> These commenters question the validity of claims by broadcasters that they are providing substantial locally oriented programming, and maintain that financial considerations, exacerbated by the deregulation of broadcasting that began in the 1980s, have resulted in a critical decrease in the quality and quantity of programs offered by licensees that are responsive to the needs and interests of local communities that they serve. The following are examples from the record of commenters critical of broadcasters' localism efforts.

35. The Consumer Federation of America and Consumers Union conclude that deregulated markets will not provide society with the responsive diverse local broadcast matter that our democracy needs to thrive, and call for an aggressive policy to promote localism and diversity that does not conflict with First Amendment principles.<sup>74</sup> The American Federation of Television and Radio Artists and the American Federation of Musicians ("AFTRA/AFM") state that broadcasters are failing to serve the interests of local communities in developing and promoting local artists and in fostering musical genres.<sup>75</sup>

36. In separate comments, three groups involved in community production of local television programming—the Alliance for Community Media-Western Region, a nonprofit organization representing public, educational and government ("PEG") access centers that trains individuals in the production of such programming carried over dedicated cable PEG channels;<sup>76</sup> Chicago Access Corporation "CAN TV," which provides such training in the Chicago, Illinois, area;<sup>77</sup> and Diablo Video Arts, Inc., a volunteer-based community group that develops community-based programming in Contra Costa County, California<sup>78</sup>—each maintains in its respective filing that broadcasters are improperly scaling back their news and public affairs programming. The Campaign Legal Center and The Alliance for Better Campaigns ("Campaign Commenters") also express their concern about what they perceive to be a continual decline in recent years in the amount of local and network broadcast news coverage of substantive campaign and election issues.<sup>79</sup>

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<sup>72</sup> Comments of the Radio-Television News Directors Association (Nov. 1, 2004), at 1-2 ("local broadcasters are overwhelmingly responsible and responsive to their communities [and] voluntarily provide a wealth of news, information, public affairs and other programming reflective of the desires of their listeners and viewers").

<sup>73</sup> See, e.g. Reply Comments of National Federation of County Broadcasters (Jan. 3, 2005) ("NFCB Reply Comments") at 10.

<sup>74</sup> Comments of the Consumer Federation of America and Consumers Union (Nov. 1, 2004) ("CFA/CU Comments") at Att. B 36-42.

<sup>75</sup> Comments of the American Federation of Television and Radio Artists and the American Federation of Musicians (Nov. 1, 2004) ("AFTRA/AFM Comments") at 15-25. In Section III.G of this Report, we address issues relating to airplay of the music of local artists.

<sup>76</sup> Comments of the Alliance for Community Media-Western Region (Nov. 1, 2004).

<sup>77</sup> Comments of Chicago Access Corporation "CAN TV" (Oct. 19, 2004) ("CAN TV Comments").

<sup>78</sup> Comments of Diablo Video Arts, Inc. (Nov. 1, 2004) ("Diablo Comments").

<sup>79</sup> Comments of the Campaign Legal Center and The Alliance for Better Campaigns (Nov. 1, 2004) ("Campaign Comments") at 1-4.



37. NY/PA Media Action and Binghamton Independent Media Center submitted a joint study of the state of broadcast localism in the Binghamton, New York, market.<sup>80</sup> Their Reply Comments contend that area licensees have grossly overstated the amount of locally oriented news programming that they offer by including “time spent on commercials, weather, sports, entertainment, video news releases, and redundancy....”<sup>81</sup> They also maintain that locally produced public affairs programming “is almost entirely absent.”<sup>82</sup> Their comments similarly criticize local public broadcasters for barring access by independent producers of programming, removing “activists” from community advisory boards and closing their meetings to the public.<sup>83</sup> NY/PA/Binghamton praise the programming of two Binghamton area television and two area radio licensees, the local news and public affairs of which they state represent more than 90 percent of that in the market by stations in their respective media. Nevertheless, they claim that, generally, local broadcasters are fixated on ratings and revenues at the expense of locally oriented programming.<sup>84</sup>

38. The Donald McGannon Communication Research Center at Fordham University (“McGannon Center”) submitted two studies on localism.<sup>85</sup> The first, “Television Station Ownership Characteristics and Local News and Public Affairs Programming: An Expanded Analysis of Commission Data” (the “Expanded Analysis”), is a May 2003 analysis<sup>86</sup> of an earlier Commission-directed study concerning the provision of news and public affairs programming by affiliates of the four major television networks (the “Spavins Study”).<sup>87</sup> While the Expanded Analysis agrees with the Spavins Study’s ultimate conclusion that there is a positive correlation between network or newspaper ownership and the provision of local news programming, the Expanded Analysis differs from the Spavins Study in finding no such correlation between such ownership and the provision of local public affairs programming. Instead, the Expanded Analysis concludes that the provision of public affairs programming appears to be a function of station revenues.<sup>88</sup> The second study submitted by the McGannon Center, “Market Structure, Station Ownership and Local Public Affairs Programming on Local Broadcast Television” (the “Public Affairs Programming Study”), provides descriptive information on available local and non-local public affairs programming derived from a two-week random sample in 2003 of 285 commercial and noncommercial television stations. The Public Affairs Programming Study

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<sup>80</sup> Reply Comments of NY/PA Media Coalition and Binghamton Independent Media Center (prepared by William Huston) (Dec. 30, 2004). See Section III.C of this Report for a discussion of issues relating to political programming.

<sup>81</sup> *Id.* at 3, 20-21.

<sup>82</sup> *Id.* at 3.

<sup>83</sup> *Id.* at 18.

<sup>84</sup> *Id.* at 3, 22.

<sup>85</sup> See McGannon Comments at 4-30 (study one), 31-60 (study two).

<sup>86</sup> Napoli, Philip M., “Television Station Ownership Characteristics and Local News and Public Affairs Programming: An Expanded Analysis of FCC Data” (2003).

<sup>87</sup> Spavins, Thomas, Dennison, Loretta, Frenette, Jane and Roberts, Scott, “The Measurement of Local Television News and Public Affairs Programs” (2002), available at <http://www.fcc.gov/ownership/studies.html>.

<sup>88</sup> McGannon Comments at 20-21.



analyzes the relationship between market and station characteristics and the provision of such programming.<sup>89</sup> It concludes that half of the stations surveyed (and 59 percent of the surveyed commercial stations) provided no local public affairs programming during the two-week sample period.<sup>90</sup> On average, commercial broadcast stations provided 45 minutes of such programming during the period.<sup>91</sup> In contrast, 90 percent of the public stations surveyed aired some local public affairs programming— 3.5 hours per week, on average.<sup>92</sup> The Public Affairs Programming Study also finds no meaningful relationship between market conditions and the provision of such programming, but it does find a significant correlation between network ownership and the provision of such programming, with network-owned stations less likely to provide it.<sup>93</sup>

39. Based on the foregoing criticisms, several commenters provided numerous proposals in the record for how the Commission may accomplish the goal of increasing the amount of locally responsive programming. Proposals offered by commenters included the following: exploring the use of the cable public, education, and government (“PEG”) model for public access to broadcast stations;<sup>94</sup> requiring “public interest minimums” for public affairs and political programming, as well as locally produced public service announcements;<sup>95</sup> requiring standardized reporting on a quarterly basis so that the public and the Commission can see how community needs, interests, and problems are being served through local programming;<sup>96</sup> developing a system of community access/channel leasing;<sup>97</sup> promoting cable multicast must-carry;<sup>98</sup> and requiring that the main broadcast studio be located in the local community “as part

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<sup>89</sup> Yan, Michael and Napoli, Philip M., “Market Structure, Station Ownership, and Local Public Affairs Programming on Local Broadcast Television” (2004).

<sup>90</sup> McGannon Comments at 46.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 46-47.

<sup>93</sup> *Id.* at 47-48.

<sup>94</sup> Comments of The Alliance for Community Media-Western Region (Nov. 1, 2004) at 1-2; CAN TV Comments at 1; Comments of Laurie Cirivello (Nov. 1, 2004) at 1-3; Comments of Mt. Hood Cable Regulatory Commission (Oct. 29, 2004); Comments of The Alliance for Community Media (Oct. 27, 2004) at 1; Comments of Newton Communications Access Center, Inc. (Oct. 18, 2004) at 1; Comments of Ronda Orchard (Sept. 20, 2004) at 1-2; Diablo Comments at 2; Comments of Maui Community Television (Oct. 27, 2004) at 1-2; Testimony of Tony Vigue, President, Community Television Network (Portland Tr. 42-43).

<sup>95</sup> Comments of Capitol Broadcasting Company, Inc. (Nov. 1, 2004) (“Capitol Comments”) at 4-5; see also Testimony of Daniel Albert, Mayor, Monterey, California (Monterey Tr. 34-36).

<sup>96</sup> *Id.* at 4; Testimony of James Goodmon, President and CEO, Capitol Broadcasting Company, Inc. (Charlotte Tr. 130-33) (calling for minimum public interest standards and a standardized reporting form); *see also* Testimony of Andrew Schwartzman, President and CEO, Media Access Project (Washington, D.C. Tr. 43); Comments of Arnold Wolf (Sept. 15, 2004) at 2 (“define more clearly the minimum public interest obligations that radio and television media owners must meet. . .with unequivocal implications for license renewal”).

<sup>97</sup> Comments of The Brennan Center for Justice, The Consumer Federation of America, *et al.* (Nov. 1, 2004) (“Brennan Center Comments”) at 42-47; Testimony of Sally Hebert (Portland Tr. 120-22); Testimony of Donna Frisoli (Portland Tr. 142-43); Testimony of Pat Bonsant, Manager, Saco River Community Television (Portland Tr. 174-75).

<sup>98</sup> NAB Comments at 26-30; Capitol Comments at 3, Comments of The Association of Public Television Stations (Nov. 1, 2004) at 7-9 (Apr. 8, 2005) (“APTS Comments”) (providing information concerning the projects that local

of the neighborhood,” along with the imposition of minimum programming origination requirements.<sup>99</sup>

### 3. Issues for Commission Action

40. *Local Programming Renewal Application Processing Guidelines.* Some commenters argued that the Commission should require “public interest minimums” for public affairs and political programming, as well as locally produced public service announcements.<sup>100</sup> We tentatively conclude that we should reintroduce renewal application processing guidelines that will ensure that all broadcasters, not just the ones we heard from in this proceeding, provide some locally-oriented programming. Renewal applications filed by licensees that have met or exceeded the prescribed minimum percentages will be processed by the Media Bureau on delegated authority; those that do not will require consideration by the full Commission. At paragraph 124 of this Report, we pose certain questions for comment by the public regarding this proposal.

41. *Main Studio Rule.* We share the concern underlying proposals that the Commission require that licensees locate their main studios within the local communities so that they are “part of the neighborhood.”<sup>101</sup> The main studio rule is rooted in Section 307(b) of the Communications Act.<sup>102</sup> Section 307(b) requires the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same.”<sup>103</sup> In carrying out this mandate, the Commission established a method for distributing broadcast service in which every radio and television station was assigned to a community of license with a primary obligation to serve that community.<sup>104</sup> A central component of this scheme required that a broadcast station's main studio be accessible to its community of license.<sup>105</sup> At one time, all broadcasters were required to maintain their main studios in their communities of license. In 1987, however, the Commission changed its rules to allow a station to locate its main studio at any location within the station's principal community contour.<sup>106</sup> In 1998, the Commission further liberalized the rule to allow the studio to be located within either the principal community contour of any station, of any service, licensed to its community of license or 25 miles from the reference coordinates of the center of its community of license, whichever location the licensee

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public television stations are implementing to use the additional programming streams made possible by the digital conversion); Statement of Joseph W. Heston, President and General Manager, KSBW-TV (Monterey Tr. 61); Testimony of Elsie Garner, President and CEO, WTVI(TV) (Charlotte Tr. 102-03); Testimony of Steve Giust, General Manager, Station KWEX-TV (San Antonio Tr. 49); Testimony of Joseph W. Heston, President and General Manager, Station KSBW-TV (Monterey Tr. 61-62).

<sup>99</sup> Testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey, California (Monterey Tr. 48).

<sup>100</sup> Capitol Comments at 4-5.

<sup>101</sup> See, e.g., Testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey, California (Monterey Tr. 48-49).

<sup>102</sup> 47 U.S.C. § 307(b).

<sup>103</sup> *Id.*

<sup>104</sup> See *Main Studio R&O*, 2 FCC Rcd 3215.

<sup>105</sup> See *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report & Order, 13 FCC Rcd 15691, 15692 ¶ 2 (1998).

<sup>106</sup> *Id.* at 15693, ¶ 3 (citing *Main Studio R&O*, 2 FCC Rcd at 3217-18).

chooses.<sup>107</sup> We seek comment on whether we should revert to our pre-1987 main studio rule in order to encourage broadcasters to produce locally originated programming, and seek comment on this, and on whether accessibility of the main studio increases interaction between the broadcast station and the community of service.

42. *Enhanced Disclosure.* The record in this proceeding reveals that the public is concerned with the limited disclosure of local programming aired by broadcasters, and public access to such information. As we discussed above, we have enacted Enhanced Disclosure measures for television licensees which would help educate the public about existing their local programming. These include adoption of a standardized quarterly reporting form that requires broadcasters to indicate the community needs and issues they had identified and the programming they aired in response to them, and the posting of that information on the Internet. Although these new disclosure obligations apply only to television licensees, as noted *supra*, in our *Digital Audio FNPRM*, we have inquired as to whether radio licensees should also be subject to these requirements.<sup>108</sup>

43. *Community Advisory Boards.* As discussed in the preceding section of this Report, we have tentatively concluded that licensees should convene permanent advisory boards comprised of local officials and other community leaders, to periodically advise them of local needs and issues, and seek comment on the matter. This mechanism will enhance the ability of licensees to determine those issues facing their communities that they should treat in their local programming. We believe that, generally speaking, if a licensee already has formal groups in place with which it consults to determine the needs of its community, it should be deemed to have satisfied this requirement. We also seek comment on under what circumstances a licensee should be deemed to have so satisfied this requirement.<sup>109</sup>

44. To ensure that these discussions include representatives of all community elements, these boards would be made up of leaders of various segments of the community, including underserved groups. At paragraphs 26 and 27 of this Report, we have posed a series of questions for public comment as to the appropriate composition and operation of these advisory boards.

45. *“The Public and Broadcasting.”* As discussed above, the record in this proceeding reveals that there is a substantial need for greater understanding of specific broadcaster obligations to air community-responsive programming. As indicated in paragraphs 18 and 19 above, we direct the Media Bureau to update the Commission’s “The Public and Broadcasting” publication, our guide designed to assist audiences to scrutinize local stations’ adherence to our rules. The revised publication will provide links to the Commission website where the public may find more detailed information on particular broadcasting topics. We also will create a point of contact at the Commission for public inquiries about our processes.

46. *Television Market Definitions/Cable Broadcast Carriage.* Another way that we intend to increase access to community-responsive programming is by examining our rules to remedy the infrequent but significant situations in which cable and satellite subscribers often do

<sup>107</sup> *Id.*, 13 FCC Rcd 15694 ¶ 7; see 47 C.F.R. §73.1125.

<sup>108</sup> See *supra* note 37.

<sup>109</sup> See *supra* para. 26.

not receive the local news and information provided by an in-state television station, because our rules effectively require carriage of an out-of-state station.<sup>110</sup> Cable or satellite subscribers thus cannot access a station assigned to another “Designated Market Area” (“DMA”), as that concept is employed in our rules, even if the station is located in their state. We intend to begin a proceeding to propose rules to promote access by cable and satellite subscribers to the programming of television broadcast stations licensed to communities in the state in which they live.

47. Under the Communications Act, cable systems must carry the signals of local commercial and noncommercial broadcast stations in their local markets.<sup>111</sup> Since 1996, the Commission generally has looked to Nielsen Media Research Company’s DMAs in defining a television broadcast station’s local market,<sup>112</sup> except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station’s television market.<sup>113</sup>

48. Satellite carriage of local broadcast stations differs from cable carriage in that there is no statutory “must carry” requirement, except in Alaska and Hawaii,<sup>114</sup> rather, satellite carriage obligations generally arise when a carrier relies on the statutory copyright license to

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<sup>110</sup> See 47 C.F.R. §§76.55(cable); 76.66 (satellite).

<sup>111</sup> See 47 U.S.C. § 534 (local commercial television stations); 47 U.S.C. § 535 (noncommercial educational television stations); *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, Report and Order, 8 FCC Rcd 2965 (1993) (“*Cable Must Carry Order*”). See also *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 Broadcast Signal Carriage Issues*, Memorandum Opinion and Order, 9 FCC Rcd 6723 (1994) (“*Cable Must Carry Reconsideration Order*”).

<sup>112</sup> See *Definition of Markets for Purposes of The Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 6201 (1996); *Definition of Markets for Purposes of The Cable Television Mandatory Television Broadcast Signal Carriage Rules*, Order on Reconsideration and Second Report and Order, 14 FCC Rcd 8366 (1999). See also 47 C.F.R. § 76.55(e).

<sup>113</sup> 47 U.S.C. § 534(h)(1)(C). These market additions and deletions are called “market modifications” and apply only to commercial stations. Noncommercial educational (“NCE”) stations are eligible for mandatory cable carriage based on their geographic relationship to a cable system’s headend, not on commercial publications’ delineations of local market areas. See 47 U.S.C. § 535(l)(2) (defining “qualified local noncommercial educational television station” as such stations licensed to a community within 50 miles of the principal headend of the cable system or whose Grade B service contour, as defined in 47 C.F.R. § 73.683(a), encompasses the principal headend of the cable system). See also 47 C.F.R. § 76.55(b).

<sup>114</sup> See 47 U.S.C. § 338(a)(4). See also *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, Report and Order, 20 FCC Rcd. 14242 (2005); 47 C.F.R. § 76.66(b)(2).

offer “local-into-local” service in a market.<sup>115</sup> As with cable carriage, a television station’s local market generally is the DMA in which it is located.<sup>116</sup>

49. DMAs describe each television market in terms of a unique geographic area and are based on measured viewing patterns.<sup>117</sup> In a small group of identifiable cases, however, general reliance on DMAs to define a station’s market may not provide viewers with the most local programming. Certain DMAs cross state borders, and in such cases, current Commission rules sometimes require carriage of the broadcast signal of an out-of-state station rather than that of an in-state station.<sup>118</sup> Such cases may weaken localism, since viewers are often more likely to receive information of local interest and relevance – particularly local weather and other emergency information and local news and electoral and public affairs – from a station located in the state in which they live.

50. In particular, with respect to cable carriage, Section 614(b)(5) of the Communications Act provides that “a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local television station which is carried on the cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network . . . .”<sup>119</sup> A parallel rule applies to the carriage of NCE station signals.<sup>120</sup> The Commission concluded in implementing this rule that when such duplication occurs, if the cable operator chooses to carry only one of the duplicating stations, it must carry the station whose community of license is closest to the cable system’s principal headend.<sup>121</sup> In general, this rule has ensured that cable

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<sup>115</sup> A satellite carrier provides “local-into-local” service when it retransmits a local television station’s signal back into the local market of the television station for reception by subscribers. 47 C.F.R. § 76.66(a)(6). Local-into-local service is designed to increase the local programming choices available to television households by allowing satellite operators to provide the signal of a television station to subscribers residing in the station’s local market.

<sup>116</sup> 47 U.S.C. § 338(k)(3) defines the term “local market” by using the definition found in 17 U.S.C. § 122(j)(2): “The term ‘local market,’ in the case of both commercial and noncommercial television broadcast stations, means the designated market area in which a station is located, and – (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area are within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station.”

<sup>117</sup> See 17 U.S.C. § 122(j)(2)(A)-(C). There are 210 DMAs that encompass all counties in the 50 United States, except for certain areas in Alaska. See Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates (2006-07 ed.). Congress created a special local market definition for these counties in Alaska. See 17 U.S.C. § 122(j)(2)(D).

<sup>118</sup> A review of the 210 Nielsen DMAs shows that more than 400 counties are in DMAs in which all or virtually all the stations deemed “local” are actually located in a different state. More than one-third of these counties are in DMAs that do not have any stations assigned by Nielsen from the home state. See R.R. Bowker, *Broadcasting & Cable Yearbook 2008*, B-146-230 (2007).

<sup>119</sup> 47 U.S.C. § 534(b)(5).

<sup>120</sup> See 47 U.S.C. §§ 535(b)(3)(C) and 535(e).

<sup>121</sup> See *Cable Must Carry Order*, 8 FCC Rcd at 2979-81 ¶¶ 55-56. See also 47 C.F.R. § 76.56(b)(4)(ii).



subscribers have access to the station that is most local for them.<sup>122</sup> However, in some cases, the station that is geographically closest to the headend is in a different state from the state in which the subscriber lives.<sup>123</sup> This situation may occur when a cable system straddles a state line within one DMA or when a cable system straddles two DMAs. The situation is different with respect to satellite carriage, but it is no less problematic. Unlike rules governing cable carriage, current Commission rules governing satellite carriage of local broadcast stations do not provide for market modifications, resulting in a rigid adherence to DMA designations.<sup>124</sup> We agree with commenters that this situation should be remedied and, accordingly, we will commence a rulemaking proceeding to address the need to ensure that all cable and satellite subscribers have access to television broadcast stations licensed to communities within the viewers' home state. This issue will be addressed in that rulemaking proceeding, rather than in this proceeding.

51. *AM Use of FM Translators.* In order to promote diversity and localism, we have commenced a rulemaking proceeding<sup>125</sup> to examine our rules which prevent AM radio stations from operating FM translator stations as a fill-in service.<sup>126</sup> In that proceeding, we are considering revising our rules to expand the purpose and permissible service of FM translator stations to allow their use to provide fill-in service for AM radio stations. The Commission has tentatively concluded that, *inter alia*, (1) daytime-only AM licensees should be permitted to originate programming over fill-in FM translators during the nighttime hours when their stations are not authorized to operate; and (2) any AM station should be permitted to operate an available FM translator to retransmit its AM programming as a fill-in service, as long as no portion of the 60 dBu contour of the FM translator exceeds the lesser of: (a) the 2 mV/m daytime contour of the AM station or; (b) the 25-mile radius of the AM transmitter site.<sup>127</sup>

52. We recognize that AM radio stations remain an important component of the mass media landscape and vital providers of local broadcast service, commonly offering unique, community-responsive formats to distinguish themselves in an increasingly competitive media market.<sup>128</sup> All-news/talk, all-sports, foreign language, and religious programming formats are

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<sup>122</sup> We note that there is nothing in the statute that would preclude a cable operator from carrying duplicating stations and considering both stations as local. *See, e.g.*, 47 U.S.C. §§ 533(b)(3)(C), 535(e). The statute merely provides that the cable system is not required to carry both.

<sup>123</sup> For example, under our current rule, several cable systems serving subscribers in Indiana are required to carry stations licensed to communities in Illinois, Ohio, and Kentucky, rather than stations located in Indiana because the out-of-state stations are closer to the cable headends than stations licensed to communities in Indiana.

<sup>124</sup> *See Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues*, Report and Order, 16 FCC Rcd 1918, 1937 ¶ 41 (2000).

<sup>125</sup> *Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Notice of Proposed Rule Making, MB Docket No. 07-172, 22 FCC Rcd 15890 (2007) ("*FM Translator NPRM*"). The Commission previously solicited comments and reply comments by public notice on the "Petition for Rulemaking of the National Association of Broadcasters," RM Docket No. 11338 (July 14, 2006) ("*NAB Petition*"). *See* Public Notice, Report No. 2782 (rel. July 25, 2006). *See* Sections 1.4 and 1.405 of the Commission's rules, 47 C.F.R. §§ 1.4, 1.405.

<sup>126</sup> FM translator stations are low power facilities currently licensed for the limited purpose of retransmitting the signals of either an FM radio station or another FM translator station. *See* 47 C.F.R. § 74.1201(a).

<sup>127</sup> *FM Translator NPRM*, 22 FCC Rcd at 15890-92 ¶¶ 1-6.

<sup>128</sup> *Id.* at 15891-93 ¶ 5.



common on the AM band, as are discussions of local news, politics and public affairs, traffic announcements and coverage of community events such as high school athletic events. Moreover, they frequently provide the only radio service to listeners in a variety of circumstances, particularly those living in and traveling through rural areas.<sup>129</sup>

53. However, the AM band suffers from inherent technical limitations that threaten its viability. For example, the propagation characteristics of the AM band cause substantially increased interference among AM broadcasts at night, requiring many AM stations to reduce their operating power substantially (and/or directionalize their signals), thereby eliminating service to certain swaths of their audience.<sup>130</sup> Others (daytime-only stations) are prohibited from broadcasting at night at all.<sup>131</sup> Even beyond this significant nighttime service issue, during all hours of operations, increasing electromagnetic interference to AM transmissions emanates from power lines, electronics equipment such as computers and televisions, fluorescent and neon lighting and dimmers used for incandescent lighting, electric motors, traffic signal sensors, RF from cable lines and equipment, and certain kinds of medical equipment.<sup>132</sup> The result has been a well-documented shift of AM listeners to newer mass media services that offer higher technical quality and superior audio fidelity.<sup>133</sup>

54. Many commenters in that proceeding, which remains open, favor allowing AM stations to use FM translators to retransmit their signals within each AM station's current coverage area, with many commenters noting the potential of this proposal to expand coverage of local news and events by mitigating the AM band's technical deficiencies and permitting increased nighttime operations.<sup>134</sup> Moreover, associations representing minority broadcasters commented in favor of the proposal, arguing that it would help reverse the sharp downward trend in minority ownership by improving the viability and value of AM stations.<sup>135</sup> Their comments endorsed the following statement by the Radio Broadcasters Association of Puerto Rico and Independent Spanish Broadcasters Association in support of the NAB Petition:

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<sup>129</sup> *Id.*; see also *Review of the Technical Assignment Criteria for the AM Broadcast Service*, Report and Order, 6 FCC Rcd 6273, 6275 ¶ 3 (1991) ("Expanded Band R&O").

<sup>130</sup> See NAB Petition at 4 (some stations lose 80-95% of their coverage area to protect clear channel AM stations often located hundreds of miles away).

<sup>131</sup> Some daytime-only stations are permitted to operate during sunrise and sunset hours at extremely low power levels. *Id.* at 4 n.7.

<sup>132</sup> *FM Translator NPRM*, 22 FCC Rcd at 15891 ¶ 4.

<sup>133</sup> *Expanded Band R&O*, 6 FCC Rcd at 6275 ¶ 2.

<sup>134</sup> See, e.g., Comments of the AM Daytimers Association (Aug. 24, 2006) at 1-2; Comments of Don Moore, WAWK Radio (Aug. 24, 2006) at 2-3; Comments of Jane Elizabeth Davis Pigg, WCRE(AM) (Aug. 7, 2006) at 1; Comments of Debbie Beal, WRGS(AM) (Aug. 11, 2006) at 1; Comments of Chris McGinnis, WRUS(AM) (Aug. 22, 2006) at 1; Comments of C.R. Communications, Inc. (Aug. 23, 2006) at 1-3; Comments of Richard A. Ford, WERT(AM) (Aug. 22, 2006) at 1; Comments of Mark and Arlene Bohach, WLOH(AM) (Aug. 22, 2006) at 1; Comments of Beverly Broadcasting Company, LLC (Aug. 22, 2006) at 1-2; Comments of WLDS-AM (Jerdon Broadcasting) (Aug. 11, 2006) at 1; Comments of Miller Communications, Inc., *et al.* (Aug. 17, 2006) at 1-2.

<sup>135</sup> See Reply Comments of the National Association of Black Owned Broadcasters and the Minority Media and Telecommunications Council (Sept. 6, 2006) at 3-4.

By allowing use of FM translators with AM stations to improve the integrity of the AM band, the Commission would enhance the ability of AM stations to compete with other media sources. Such competition, in turn, drives creativity, ingenuity and attentiveness to the needs of the public in the marketplace as a whole.<sup>136</sup>

## C. POLITICAL PROGRAMMING

### 1. Issues

55. In the *NOI*, the Commission noted that one area in which broadcasters have concrete, defined programming obligations is that of political programming. In this regard, the Commission specifically cited two provisions of the Communications Act: the reasonable access provision (the Commission is expressly empowered to revoke the license of a broadcast station that does not allow “reasonable access” to or the “purchase of reasonable amounts of time” on its facilities by a “legally qualified candidate for Federal elective office...”)<sup>137</sup> and the equal opportunities provision (“[i]f any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station”).<sup>138</sup>

56. The Commission has previously noted that some broadcasters have aired many hours of political programming and that several television networks have provided free airtime to candidates for president in recent elections.<sup>139</sup> However, the Commission has also referenced testimony at a Congressional hearing on localism and the public interest in which a witness reported research results suggesting a decline in political programming and that larger station group owners air less local campaign news than smaller and mid-sized station group owners.<sup>140</sup> In addition, the Commission has cited studies suggesting that many television broadcasters have provided little or no political programming.<sup>141</sup>

57. The *NOI* sought comment on questions regarding the Commission’s political programming rules and whether there were ways that the Commission’s existing rules could be revised or strengthened to facilitate political discourse, including creating a form to standardize the way in which stations disclose certain information to candidates and requiring the posting of certain information on a station’s website.<sup>142</sup> The Commission also asked how much program time in recent years has been devoted to local and to national political coverage, and what steps could be taken to encourage voluntary efforts for political and civic discourse. Given that Congress has enacted specific requirements governing political programming, the *NOI* further

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<sup>136</sup> *Id.* at 1.

<sup>137</sup> 47 U.S.C. § 312(a)(7).

<sup>138</sup> 47 U.S.C. § 315(a).

<sup>139</sup> See *DTV Public Interest NOI*, 14 FCC Rcd at 21647-48 ¶ 35.

<sup>140</sup> Testimony of Martin Kaplan, Director, Annenberg Norman Lear Center, Associate Dean USC Annenberg School for Communication, on Local TV News Coverage of Politics and the Public Interest Obligations of Broadcasters, Before the United States Senate Commerce Committee, July 23, 2003, available at <http://www.learcenter.org/pdf/SenateTestimony.pdf>.

<sup>141</sup> See *DTV Public Interest NOI*, 14 FCC Rcd at 21648 ¶ 36.

<sup>142</sup> *NOI*, 19 FCC Rcd at 12433-34 ¶ 23.

inquired whether it would be appropriate or permissible for the Commission to take additional steps to enhance broadcasters' coverage of local political candidates and issues.<sup>143</sup>

## 2. Public Comments

58. The record here reflects sharp disagreement among commenters as to the broadcasters' record in airing programming addressing political issues and the Commission's legal authority in the area. The NAB contends that the imposition of any political programming quota would exceed the Commission's authority and raise serious constitutional problems.<sup>144</sup> Moreover, the NAB asserts that the Commission's discretion in the political programming area "is severely limited because Congress already has occupied the field" through specific statutory provisions, thereby barring any Commission efforts to insert incompatible policies.<sup>145</sup>

59. The NAB also avers that new obligations in the area of political programming are wholly unnecessary as a matter of policy. Rather, it contends that broadcasters already deliver a sufficient amount of political coverage and takes issue with the findings of the Lear Center Study of broadcasters' political coverage<sup>146</sup> on which the Commission has relied.<sup>147</sup> In particular, it states that the Study's findings are based on an overly limited sample of time in the broadcast day and ignores other news coverage.<sup>148</sup> The NAB provides examples of broadcasters who are launching or continuing projects that devote five minute or longer segments to discussions of relevant election issues. It also contends that an important factor overlooked by media critics is the substantial amount of free political airtime that goes unused because candidates frequently reject it. The NAB points to the offer by NBC to host debates in 13 Senate races in which at least one candidate declined in 11 of the races, as well as other specific examples of offers of free airtime which were refused.<sup>149</sup> On reply, the NAB contends that parties representing at least 1,472 radio and 255 television stations specifically discussed their coverage of political issues in comments in this proceeding.<sup>150</sup> The NAB sets forth specific examples from the record concerning broadcaster coverage of political debates, candidate interviews, and other political issues.<sup>151</sup>

60. The NAB also addresses two controversies concerning political programming that arose during the months leading up to the 2004 election. The first concerned a decision by Sinclair Broadcast Group, Inc. to air a documentary critical of presidential candidate John Kerry. The NAB notes that, following an outpouring of complaints about the situation, most of which argued that Sinclair's action was an example of improper bias, the broadcaster decided not to air

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<sup>143</sup> *Id.* at 12433 ¶ 22.

<sup>144</sup> NAB Comments at 36.

<sup>145</sup> *Id.* at 37.

<sup>146</sup> *See infra*, para. 63.

<sup>147</sup> *See NOI*, 19 FCC Rcd at 12433 ¶ 21.

<sup>148</sup> NAB Comments at 42-43.

<sup>149</sup> *Id.* at 48-50; Reply Comments of the National Association of Broadcasters (Jan. 3, 2005) at 15.

<sup>150</sup> *Id.* at 14.

<sup>151</sup> *Id.* at 14-15.

the documentary in its entirety. Instead, it aired a news program that focused on allegations of media bias and included only portions of the Kerry documentary.<sup>152</sup> The second situation concerned a significant donation of airtime by Pappas Telecasting Companies to Republican county committees in California for use on behalf of Republican state and local candidates.<sup>153</sup> The NAB notes that the Commission's Media Bureau issued a decision concluding that Pappas' donation had triggered the equal opportunities requirements, meaning that opponents of those candidates using the donated airtime were entitled to their own free equal time.<sup>154</sup> The NAB believes that the resolution of these controversies "underscore[s] the wisdom of the Commission's long-standing reliance on marketplace incentives to govern broadcasters' programming, rather than justify further government regulation."<sup>155</sup>

61. Several commenters describe their efforts as station licensees to provide coverage of local and national elections.<sup>156</sup> For example, during the 14 weeks leading up to the November 2004 general election, Belo Corp., licensee of 19 television stations, states that its stations broadcast 338 hours of candidate debates, news stories, interviews, candidate forums, and other political programming. To increase voter awareness and education, Belo stations rebroadcast their political coverage on sister stations and on the Company's cable news channels, where available, and eight Belo stations posted video of local debates on their websites.<sup>157</sup> In addition, Belo reports that its stations gave more than 20 hours of free airtime to Congressional and gubernatorial candidates during the 2004 election season as part of its continued airing of "It's Your Time," a program originated by Belo in 1996 to provide free airtime to local candidates to address viewers on issues facing their communities.<sup>158</sup> Belo argues that market forces and journalistic imperatives provide ample incentive for broadcasters to air local news, public affairs, and other community responsive programming. It therefore urges the Commission to resist adopting new political programming rules.<sup>159</sup>

62. Several public interest organizations, on the other hand, contend that broadcasters' current efforts to air politically oriented programming are insufficient. The Consumer Federation of America and Consumers Union ("CFA/CU") are each nonprofit organizations, the former an association of pro-consumer groups, the latter a membership organization that provides consumers with information, education and counsel about goods, services, and personal finance.<sup>160</sup> CFA/CU characterizes as "severe" the gap between what society needs from media to ensure a vibrant democratic discourse and what society gets from

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<sup>152</sup> *Id.* at 25-26.

<sup>153</sup> *Id.* at 25.

<sup>154</sup> *Id.* at 26-27.

<sup>155</sup> *Id.* at 28.

<sup>156</sup> *See, e.g.*, Further Comments of Belo Corp. (Jan. 3, 2005); Testimony of Jim Keelor, President and COO, Liberty Corporation (licensee of 15 television stations) (Charlotte Tr. 32-34); Testimony of Jeff Wade, Saga Communications (Portland Tr. 74-76); Clear Channel Comments at 22-24.

<sup>157</sup> Further Comments of Belo Corp. (Jan. 3, 2005) at 1.

<sup>158</sup> *Id.* at 2, and at appended November 16, 2004 News Release.

<sup>159</sup> *Id.* at 3.

<sup>160</sup> CFA/CU Comments (Nov. 1, 2004) at 1.

commercial mass media.”<sup>161</sup> CFA/CU submit two studies in support of their Comments, entitled “Television and Political Discourse: Usage Patterns, Social Processes and Public Support for Broadcaster Responsibilities to Promote Localism and Diversity” (“Political Discourse Study”) and Market Failures of Commercial Mass Media to Meet Society’s Need for Localism and Diversity (“Market Failures Study”).<sup>162</sup> The Political Discourse Study recognizes the important role that television plays in the political process, both as a source of news and information for the public and as the dominant medium for public influence. It concludes that the pressures of commercialism in the media damage both journalism and democratic discourse.<sup>163</sup> The Market Failures Study takes issue with the validity of the Commission’s conclusion over 20 years ago in deregulating broadcasting that market forces in an increasingly competitive market would encourage broadcasters to satisfy policymakers’ localism goals. CFA/CU conclude that deregulated markets will not provide society with the responsive diverse local broadcast matter that democracy needs to thrive. Accordingly, they call for an aggressive policy to promote localism and diversity that does not conflict with constitutional First Amendment principles.<sup>164</sup>

63. Another study submitted for the record is the Lear Center Local News Archive’s “Local News Coverage of the 2004 Campaign: An Analysis of Nightly Broadcasts in 11 Markets.”<sup>165</sup> The Lear Center Study examined pre-election coverage of 44 network-affiliated television stations in 11 major markets airing every night between 5:00 and 11:30 p.m. from October 4 to November 1, 2004. The Lear analysis finds that almost two thirds of all news broadcasts contained at least one campaign related story. The analysis also finds that coverage of the presidential election dominated local station coverage. For example, the analysis finds that, although fifty-five percent of broadcasts contained a story regarding the presidential election, just eight percent contained a story about a local candidate race—including campaigns for U.S. House, state senate, mayor and other regional offices. The analysis also finds that eight times more coverage went to stories about accidental injuries, and 12 times more coverage to sports and weather, than to coverage of all local races combined.<sup>166</sup>

64. Belo criticizes the Lear Center Study, contending that the Study captures only a limited segment of election-related programming and does not consider morning and daytime programming, which, according to Belo, constitute a significant portion of local stations’ newscasts.<sup>167</sup> Belo contends that, even for the periods it does analyze, the Study’s figures are

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<sup>161</sup> *Id.* at 2.

<sup>162</sup> *Id.* at Att. A and B.

<sup>163</sup> *Id.* at 2, Att. A.

<sup>164</sup> *Id.* at Att. B 36-42.

<sup>165</sup> Comments of Martin Kaplan, Associate Dean, Annenberg School for Communication, University of Southern California (Feb. 7, 2005), submitting *Local News Coverage of the 2004 Campaigns, An Analysis of Nightly Broadcasts in 11 Markets*, report released by the Lear Center Local News Archive, a collaboration between the Annenberg School for Communication and the NewsLab of the Department of Political Science at the University of Wisconsin-Madison (the “Lear Center Study”), also available at <http://www.localnewsarchive.org/pdf/LCLNAFinal2004.pdf>.

<sup>166</sup> *Lear Center Study* at 3.

<sup>167</sup> Supplemental Comments of Belo Corp. in Response to the Lear Center Study (Apr. 19, 2005) (“Supplemental Belo Comments”) at 1-3.



inconsistent with the amount of political programming revealed by Belo's internal analysis of its stations' political coverage. According to Belo, awards given to its station affiliates by the Lear Center and other professional recognition received by these stations also belie the findings of the Lear Center Study.<sup>168</sup> Given the "methodological shortcomings and other limitations" of the Study, and the extensive information in the record of this proceeding concerning broadcasters' attention to local concerns, Belo argues that the Study should not be accorded any decisional significance, let alone provide a basis for imposing on broadcasters mandatory quantitative content requirements relating to political coverage or any other subject.<sup>169</sup> Belo contends that such requirements would only increase the cost of complying with "one-size-fits-all governmental oversight" and minimize stations' flexibility to attract viewers and provide programming that is responsive to community interests and concerns.<sup>170</sup>

65. The Campaign Legal Center and The Alliance for Better Campaigns ("Campaign Commenters") are nonpartisan, non-profit organizations dedicated to political broadcasting policy and revitalizing competition in our democratic process by ensuring that the public airways serve as a forum for open and vibrant political debate, particularly among candidates.<sup>171</sup> They express concern about what they perceive to be a continual decline in recent years in the amount of local and network broadcast news coverage of substantive campaign and election issues.<sup>172</sup> The Campaign Commenters recommend that the Commission adopt: (1) a policy requiring broadcast licensees to devote a minimum amount of air time to local civic and electoral affairs discourse; and (2) measures that will strengthen disclosure requirements for stations,<sup>173</sup> including the obligation of broadcasters to post on their websites political public file information and standardized forms for stations to use when reporting political advertising buys and their local civic and public affairs programming, including local electoral affairs programming.<sup>174</sup> In their

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<sup>168</sup> *Id.* at 2.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 5.

<sup>171</sup> Campaign Comments at 1.

<sup>172</sup> *Id.* at 1-4. Statement of Mary Klenz, Co-President of the League of Women Voters of North Carolina (Oct. 24, 2003) at Testimony of same (Charlotte Tr. 134-35); *see also* Testimony of Kathy Walker (Charlotte Tr. 75-76).

<sup>173</sup> Campaign Comments at 1. Martin Kaplan, Associate Dean of the Annenberg School for Communications, University of Southern California, similarly argues that the lack of political coverage and localism by stations (as evidenced by the results of an analysis of the Annenberg School of 10,000 news broadcasts that aired during the last seven weeks of the political campaign season in 2002) must be addressed by establishing standards of performance for local news and requiring stations to record their public affairs programming, including their news programming. In addition, he contends that stations' performance on the public interest obligation should be linked to the renewal of their licenses. Testimony of Martin Kaplan, Associate Dean of the Annenberg School for Communications, University of Southern California (delivered by Joseph Salzman, Associate Dean, Annenberg School, USC) (Monterey Tr. 62-67).

<sup>174</sup> Campaign Comments at 5-6. The Campaign Commenters also urge the Commission to remove the word "class" from its lowest unit charge regulation, which requires stations to charge "the lowest charge of the station for the same class and amount of time for the same period." *Id.* at 7. They argue that the current pricing structure allowing stations to have a lowest unit rate for every class of time they sell steers candidates towards the most expensive time. We note that the language quoted by the Campaign Commenters originates in a statute (47 U.S.C. § 315(b)) and, therefore, cannot be altered by the Commission. Mary Klenz, Co-President of The League of Women Voters of North Carolina, also expressed concern about the high cost of election campaigns which she argues is directly



Reply Comments, the Campaign Commenters question broadcasters' assertions that stations have satisfied their public interest obligations, including providing adequate local civic and political discourse, citing recent studies and submissions in this proceeding that conclude to the contrary.<sup>175</sup> They criticize the poll cited in the NAB's Comments which found that a total of 89 percent of voters think that broadcasters spend either the right amount of time or too much time covering elections. The Campaign Commenters argue that the question posed was about the amount of time, not the quality of the programming, and that less than half those polled described broadcasters' coverage as the most helpful source of information. They also note that the initial question did not differentiate among reporting on the presidential race (which received enormous attention in 2004) and Congressional, statewide or local races. They urge the Commission to study market conditions and reevaluate its conclusions that led to broadcast deregulation in the 1980s.<sup>176</sup>

### 3. Issues for Commission Action

66. Many broadcasters take very seriously their responsibility to inform their viewers and listeners about political issues. We share the concern of many commenters and members of the public who testified at the field hearings, including those noted *supra*, however, that not all stations do as much as they can and should in this important area – and that even for those that make appropriate efforts, the record indicates that their audiences are poorly informed about what the stations air in this regard. Accordingly, we intend to modify our rules that implicate this area.

67. We agree with the Campaign Commenters that the first step in ensuring that broadcasters meet the needs of their audiences is to “strengthen disclosure requirements for stations.” Broadcasters, cable systems, and DBS operators have long been required to maintain political files.<sup>177</sup> In 2002, the Bipartisan Campaign Reform Act (the “BCRA”) amended these requirements.<sup>178</sup> In addition to maintaining a public record of requests to buy time made by or on behalf of a candidate<sup>179</sup> and the disposition of such requests, under the BCRA, such entities must include the same specific information about any broadcast or cablecast that communicates “a message relating to any political matter of national importance including (i) a legally qualified candidate; (ii) any election to Federal office; or (iii) a national legislative issue of public importance.”<sup>180</sup> Our rules also require that stations and cable and DBS operators place in their political file a record of any free time provided for use by or on behalf of candidates<sup>181</sup> and a list

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related to the cost of television advertising and declares it “unfair that broadcasters charge such high prices for political ads the closer it gets to election day.” (Charlotte Tr. 134-35).

<sup>175</sup> Reply Comments of The Alliance for Better Campaigns and The Campaign Legal Center (Jan. 3, 2005) at 4-7.

<sup>176</sup> *Id.* at 5-11.

<sup>177</sup> See 47 C.F.R. §§73.1943, 73.3526(e)(6), 73.3527(e)(5), 76.1701, 25.701(d).

<sup>178</sup> See 47 U.S.C. § 315(e).

<sup>179</sup> 47 U.S.C. § 315(e)(1)(A).

<sup>180</sup> 47 U.S.C. § 315(e)(1)(B).

<sup>181</sup> 47 C.F.R. § 73.1943 (broadcast); 47 C.F.R. § 76.1701 (cable); 47 C.F.R. § 25.701(d) (DBS).

of executive officers/board members of any entity paying for a broadcast or cablecast concerning a political matter or controversial issue of public importance.<sup>182</sup>

68. As discussed *supra*, in the Enhanced Disclosure proceeding, for television licensees, the Commission has replaced the issues/programs lists that broadcasters now maintain in their public files with a standardized form. The new form requires each television licensee to report on its efforts to identify the programming needs of various segments of their communities, and to list their community-responsive programming by category. Included in these categories of programming is local electoral affairs programming, defined as candidate-centered discourse focusing on the local, state and United States Congressional races for offices to be elected by a constituency within the licensee's broadcast area. Such programming includes broadcasts of candidate debates, interviews or statements, as well as substantive discussions of ballot measures that will be put up before the voters in a forthcoming election. Licensees must disclose the total average number of hours per week aired of such programming on each primary and non-primary channel. In addition, they must provide detailed information for each such program, including its title, dates and times of broadcast, length and whether it was locally produced.<sup>183</sup> These new disclosure requirements will be of particular use in allowing the public and the Commission to determine the amount of critical political programming television stations air. As noted *supra*, in our *Digital Audio FNPRM*, we have inquired as to whether radio licensees should also be subject to enhanced disclosure requirements.<sup>184</sup>

## **D. UNDERSERVED AUDIENCES**

### **1. Issues**

69. The principle of localism requires broadcasters to take into account *all* significant groups within their communities when developing balanced, community-responsive programming, including those groups with specialized needs and interests.<sup>185</sup> While the Commission has observed that each broadcast station is not necessarily required to provide service to all such groups,<sup>186</sup> it has nonetheless recognized the concerns of some that programming – particularly network programming – often is not sufficiently culturally diverse.<sup>187</sup> Accordingly, in the *NOI*, the Commission sought public input on whether the agency should consider new ways, consistent with applicable constitutional standards, to ensure that broadcasters serve their communities, especially traditionally underserved audiences.<sup>188</sup>

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<sup>182</sup> 47 C.F.R. § 73.1212(e).

<sup>183</sup> See *Enhanced Disclosure Order*.

<sup>184</sup> See *supra* note 37.

<sup>185</sup> See *NOI*, 19 FCC Rcd at 12434 ¶ 24.

<sup>186</sup> See *Radio Deregulation Order*, 84 F.C.C.2d at 997 ¶ 66 (“What is important is that broadcasters present programming relevant to public issues both of the community at large or, in the appropriate circumstances, relevant primarily to the more specialized interests of its own listenership. It is not necessary that each station attempt to provide service to all segments of the community where alternative radio sources are available.”).

<sup>187</sup> See *DTV Public Interest NOI*, 14 FCC Rcd at 21646-47 ¶ 32.

<sup>188</sup> *NOI*, 19 FCC Rcd at 12435 ¶ 26.

## 2. Public Comments

70. Several commenters and participants at the Commission's localism field hearings expressed concern over the amount of programming being provided to various audiences. For example, the Reverend Jesse Jackson argues that media consolidation and low levels of minority ownership of broadcast stations are responsible for a "community crisis" concerning coverage of issues important to minorities.<sup>189</sup> The American Farm Bureau Federation, an organization with more than 5.5 million member farming families, cites what it characterizes as the elimination or curtailment of farm news by radio stations resulting from media consolidation and a decline in advertising dollars.<sup>190</sup> The United States Conference of Catholic Bishops asserts that local broadcasters display little interest in carrying the programs and PSAs produced by the Catholic dioceses and only do so at an increasingly high cost.<sup>191</sup> Others decry what they view as a lack of programming addressing the needs and interests of children,<sup>192</sup> low-income individuals,<sup>193</sup> the blind,<sup>194</sup> and people of color, including Asian-Americans,<sup>195</sup> Hispanics,<sup>196</sup> and Native Americans.<sup>197</sup> Entravision Holdings, LLC, a Spanish-language broadcaster, suggests that, in order to promote coverage of issues important to minority communities, the Commission should assert itself in the area of "must-carry of television stations on cable systems."<sup>198</sup>

71. Those communities that may be underserved in the current analog environment stand to benefit greatly from the transition to digital programming. The technical constraints of analog broadcasting limit a broadcaster's ability to offer programming that reflects that diversity among the people living in the communities served by that licensee. By contrast, as the Commission has noted elsewhere, broadcasters could use the flexibility of digital technology to better serve the needs of underserved communities in a number of ways, such as "narrowcasting"

<sup>189</sup> Testimony of the Reverend Jesse Jackson (Washington, D.C. Tr. 40-42); *see also* Comments of Tri State "Like It Is" Support Coalition (Jan. 17, 2006) (providing copies of over 1,000 letters protesting cancellation of public affairs program oriented to people of color); Testimony of Lisa Fager Bedakio, President and Co-Founder, Industry Ears (Washington, D.C. Tr. 29-31); Testimony of Wade Henderson, President, Leadership Conference on Civil Rights (Washington, D.C. Tr. 35-37).

<sup>190</sup> Comments of The American Farm Bureau Federation (Aug. 31, 2004) at 1-3; *see also* Comments of Illinois Farm Bureau (Aug. 31, 2004) at 1-2; Comments of Nebraska Farm Bureau (Aug. 30, 2004) at 1-2; Comments of Ohio Farm Bureau Federation (Aug. 27, 2004) at 1-2.

<sup>191</sup> Comments of United States Conference of Catholic Bishops (Nov. 1, 2004) at 1-3.

<sup>192</sup> Testimony of Patti Miller, Director of Children & the Media Program, Children NOW, Oakland, California (delivered by Seeta Gangadharan) (Monterey Tr. 186-88).

<sup>193</sup> Comments of T.J. Johnson for Poor Magazine.org and Poor News Network (July 20, 2004) at 1.

<sup>194</sup> Testimony of Mary Lee O'Daniel (Charlotte Tr. 66-67)

<sup>195</sup> Comments of Rancho Palos Verdes Broadcasters, Inc. (Nov. 1, 2004) at 1-3; Testimony of Tran Lin (Monterey Tr. 169-71).

<sup>196</sup> Testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey County (Monterey Tr. 44-50); Testimony of Louise Rocha-McCarthy (Portland Tr. 167-69); Testimony of Unidentified Audience Member (San Antonio Tr. 147-48).

<sup>197</sup> Testimony of Hazel Bonner, Charmaine White Face and Randy Ross (Rapid City Tr. 180-82, 212, and 266-67, respectively).

<sup>198</sup> Comments of Entravision Holdings, LLC (Nov. 1, 2004) at 4.

to those communities on different programming streams or even taking advantage of enhanced audio capabilities to air different soundtracks in different languages simultaneously.<sup>199</sup> The record here suggests that some broadcasters would like to move in this direction.<sup>200</sup> The record in other proceedings also indicates that commercial broadcasters are interested in developing “niche” programming to respond to the interests and needs of particular segments of their communities.<sup>201</sup>

### 3. Issues for Commission Action

72. Although we are encouraged by those broadcasters that are developing programming designed to serve the needs of the underserved segments of their communities, particularly those that are taking advantage of the flexibility inherent in digital television technology to provide multiple streams of programming to serve niche audiences, we believe that more needs to be done.

73. *Community Advisory Boards.* As discussed above, we tentatively conclude that licensees should convene and consult with permanent advisory boards made up of leaders from the community of each broadcast station.<sup>202</sup> In addition to informing broadcasters of issues of importance to their communities in general, such advisory boards should include representatives of all segments of the community, to ensure that those community elements have a continuing opportunity to communicate their group’s perceived needs and interests to their local broadcast station management. We believe that, generally speaking, if a licensee already has formal groups in place with which it consults to determine the needs of its community, it should be deemed to have satisfied this requirement. As discussed in paragraphs 26-28 of this Report, we seek comment on a number of issues arising from this proposal, including under what circumstances a licensee with formal groups in place should be deemed to have satisfied this requirement.

74. *Ownership Diversity.* We will also explore ways to increase participation in the broadcasting industry by Eligible Entities (“EEs”), comprised of new entrants and small

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<sup>199</sup> *DTV Public Interest NOI*, 14 FCC Rcd at 21646-47 ¶ 32.

<sup>200</sup> For example, WNYE-TV, New York, N.Y., plans to broadcast a dedicated foreign language channel, featuring programming in at least 12 languages, “complete with local news, international news and cultural programming of various countries.” APTS Comments at 9. In a number of presentations submitted along with the APTS Comments, noncommercial broadcasters discussed their plans to offer “[c]ustomized TV channels for niche audiences.” See WHYY Presentation at 17 (attached to APTS Comments).

<sup>201</sup> For example, broadcasters have advised the Commission that they are formulating plans to introduce “language training, employment updates, and immigration information in Spanish.” The NAB and the Association for Maximum Service Television, Inc, Petition for Reconsideration in CS Docket No. 98-120 (Apr. 21, 2005) at 23. Other licensees see possibilities in health outreach programs directed to specific underserved populations. ABC Television Affiliates Association, CBS Television Network Affiliates Association, NBC Television Affiliates, ABC Owned Television Affiliates, NBC and Telemundo Stations, Petition for Reconsideration in CS Docket No. 98-120 (Apr. 21, 2005) (“Network Affiliates Petition”) at 10. With multicasting, both commercial and noncommercial radio and television broadcasters can serve several distinct communities while still ensuring that public safety information, such as AMBER alerts, reaches as many people as possible in an affected area. Indeed, broadcasters report that they currently are developing multicasting and “datacasting” capabilities to accomplish that public safety objective. APTS Comments at 12-13; Network Affiliates Petition at 21.

<sup>202</sup> See *supra*, paras. 25-26.

businesses, including minority- and women-owned businesses. Increasing the number of stations licensed to such entities would add new and independent voices to the broadcast medium, which “for decades now . . . has been an essential part of the national discourse on subjects across the whole broad spectrum of speech, thought, and expression.”<sup>203</sup> It would further the “long-established regulatory goal[] in the field of television broadcasting” of “increasing the number of outlets for community self-expression....”<sup>204</sup> We also expect that entry as broadcast licensees by EEs will not only increase diversity, it will also reduce the concentration of economic power among station owners.<sup>205</sup>

75. Thus, in its *Ownership Diversity Report and Order and Third Further Notice of Proposed Rulemaking* adopted on December 18, 2007,<sup>206</sup> the Commission took a number of actions and sought comment on others designed to make it easier for EEs to gain access to financing and spectrum opportunities. Actions taken by the Commission to assist EEs included the extension of station construction deadlines, adjustment of the Equity Debt Plus ownership attribution standard and modification of the distress sale policy. The Commission also proposed a number of new rules and policies, including reaffirmation of its commitment to bar race or gender discrimination in broadcast transactions, a zero tolerance policy with regard to ownership fraud, and the requirement that broadcasters seeking renewal of their licenses certify that their advertising sales contracts do not discriminate on the basis of race or gender.

76. In addition, in the *Diversity Order*, the Commission sought to facilitate the availability of funding to EEs that seek to acquire broadcast properties by encouraging local and regional banks to engage in such lending, providing incentives to licensees to finance or incubate EEs, considering requests to extend divestiture deadlines in mergers in which participants have actively solicited bids for divested properties from EEs, and creating a guidebook that focuses on what companies can do to promote diversity. The *Diversity Order* also sought comment on improving the process by which the Commission collects data regarding the gender, race and ethnicity of its broadcast licensees. Moreover, as proposed by the Commission’s Advisory Committee for Diversity in the Digital Age (“Diversity Committee”), the *Diversity Order* committed that Commission staff will attempt to organize access-to-capital conferences to provide minority and women entrepreneurs, small businesses, and other EEs with the information necessary for them to be aware of emerging ownership opportunities in the communications industry. Commission staff will facilitate the development of such conferences to be conducted by members of the communications industry whenever a significant ownership-

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<sup>203</sup> See *Turner Broadcasting Sys. v. FCC*, 520 U.S. 180, 194 (1997) (“*Turner II*”).

<sup>204</sup> *United States v. Midwest Video Corp.*, 406 U.S. 649, 654 (1972).

<sup>205</sup> See *FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 780 (1978). Cf. 47 U.S.C. § 307(b) (“In considering applications for licenses, and modifications and renewals thereof, when and insofar as there is demand for the same, the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same.”).

<sup>206</sup> *Promoting Diversification of Ownership in the Broadcasting Services* (MB Docket No. 07-294), Report and Order and Third Further Notice of Proposed Rulemaking (adopted Dec. 18, 2007) (“*Diversity Order*”).



related transaction is proposed to the Commission.<sup>207</sup> These conferences will encourage and facilitate communications companies that engage in transactions and license transfers to include small businesses, minorities and women entrepreneurs, and other EEs during negotiations on assets and properties identified for divestiture. By implementing these and other suggestions of the Diversity Committee, the Commission can, and will, have a significant impact on increasing diversity and localism in broadcasting, while furthering its mission of enhancing the ability of minorities and women to participate in telecommunications and related industries.

77. *Enhanced Disclosure.* As discussed *supra*, in the Enhanced Disclosure proceeding, for television licensees, the Commission has replaced the issues/programs lists that broadcasters now maintain in their public files with a standardized form. This new form requires each such licensee to report on its efforts to identify the programming needs of various segments of their communities, and to provide detailed information about its community responsive programming by category. Included in these categories of programming is that for underserved communities, defined as material aimed to serve the needs of demographic segments of the community to which little or no programming is directed. Licensees must provide detailed information for each such program, including its title, dates and times of broadcast, length and whether it was locally-produced.<sup>208</sup> These new disclosure requirements will be of particular use in allowing the public and the Commission to determine the amount of such programming each television station air. Although these new disclosure obligations apply only to television licensees, as noted *supra*, in our *Digital Audio FNPRM*, we have inquired as to whether radio licensees should also be subject to these requirements.<sup>209</sup>

78. *Commercial Leased Access.* Another means for ensuring that all segments of the community have an opportunity to be heard is to enhance independent entities' access to their local cable systems. On November 27, 2007, we adopted a Report and Order revising our leased access rules to facilitate the ability of independent programmers to be carried and thereby to distribute programming of local interest.<sup>210</sup> The Commission adopted the Report and Order in response to comments from leased access programmers regarding slow response times to information requests and excessive rates and fees. The Commission's action will facilitate the use of leased access channels by adopting more specific leased access customer service standards for programmers and increased enforcement of those standards, faster cable operator response times to information requests from programmers and more appropriate leased access rates. It also will expedite the leased access complaint process and improve the discovery process related to leased access disputes.<sup>211</sup>

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<sup>207</sup> See Letter from Chairman Kevin J. Martin to the Hon. Henry Rivera, Chairman of the Advisory Committee on Diversity for Communications in the Digital Age (Sept. 27, 2007), available at [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-276984A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-276984A1.pdf).

<sup>208</sup> See *Enhanced Disclosure Order*.

<sup>209</sup> See *supra*, note 37.

<sup>210</sup> *Leased Commercial Access; Development of Competition and Diversity in Video Programming Distribution and Carriage*, Report and Order (MB Docket No. 07-42) (adopted Nov. 27, 2007) ("*Leased Access Order*").

<sup>211</sup> See *id.*

79. The commercial leased access requirements are set forth in Section 612 of the Communications Act.<sup>212</sup> They require a cable operator to set aside channel capacity for commercial use by video programmers unaffiliated with the operator. The statutory framework for commercial leased access was first established by the Cable Communications Policy Act of 1984.<sup>213</sup> Leased access is a valuable tool that gives programmers the ability to distribute diverse, locally-originated programming to viewers in the community that may not otherwise benefit from local culture, news, and information through current television sources. An effective and affordable process by which local programmers can access cable systems to provide programming of local interest is essential for many local programmers to distribute their programming to non-majority and/or underserved community groups.

80. Because programmer access to cable systems is essential to ensuring that diverse voices in the community have an opportunity to be heard, we intend that our amendment of the leased access rules will encourage increased diverse and local programming on cable systems.

## **E. DISASTER WARNINGS**

### **1. Issues**

81. We noted in the *NOI* that providing emergency information is a fundamental area in which broadcasters use their stations to serve their communities of license.<sup>214</sup> The Commission's role in ensuring that broadcasters fulfill this obligation is set forth in Section 1 of the Communications Act, which declares that the Congress created the Commission "for the purpose of promoting safety of life and property through the use of wire and radio communications...."<sup>215</sup> The Commission has adopted the Emergency Alert System ("EAS"), which "provides the President with the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency," and, in addition, "may be used to provide the heads of State and local government, or their designated representatives, with a means of emergency communication with the public in their State or Local Area."<sup>216</sup> The Commission also requires TV broadcast stations that provide emergency information beyond compliance with EAS standards to make the critical details of that information accessible to people with hearing and visual disabilities.<sup>217</sup>

82. Due to the critical and fundamental role of emergency communications as a component of broadcasters' local public service obligations, the *NOI* sought comment on

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<sup>212</sup> See 47 U.S.C. § 532. The Commission adopted leased access rules in its *Report and Order and Further Notice of Proposed Rule Making*, 8 FCC Rcd 5631 (1993); *Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 16933 (1996); and *Second Report and Order and Second Order on Reconsideration of the First Report and Order*, 12 FCC Rcd 5267 (1997).

<sup>213</sup> Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984), 47 U.S.C. § 521 *et seq.*

<sup>214</sup> See *NOI*, 19 FCC Rcd at 14235 ¶ 27.

<sup>215</sup> 47 U.S.C. § 151.

<sup>216</sup> 47 C.F.R. § 11.1. Part 11 of the Commission's rules "describe the required technical standards and operational procedures of the EAS for AM, FM, and TV broadcast stations, digital broadcast stations, analog cable systems, digital cable systems, wireline video systems, wireless cable systems, Direct Broadcast Satellite (DBS) services, Satellite Digital Audio Radio Service (SDARS), and other participating entities." *Id.*

<sup>217</sup> 47 C.F.R. § 79.2(b).

broadcaster performance in this area. The Commission called for input on whether it should require that licensees make their facilities available to local emergency managers and, if so, what the nature and scope of any such requirement would be. The Commission also sought comment on whether voluntary arrangements with local officials to provide emergency information to viewers and listeners were sufficient, or whether the Commission should impose uniform requirements and, if so, what those requirements should be.<sup>218</sup> The Commission further sought comment on how digital technology could be used to enhance warnings, and to what extent broadcasters were making use of such technology.<sup>219</sup>

## 2. Public Comments

83. The record reveals the importance that the public places on receiving timely emergency information in a time of crisis. Many commenters noted how invaluable local broadcast stations are in disseminating emergency information to the public. One described the important role local radio played in providing news updates and information on escape routes, survival tips, and recovery strategies in New Orleans in the aftermath of Hurricane Katrina.<sup>220</sup> Another stated that, with the help of local broadcasters, the State of Texas was able to turn a local tragedy into a triumph of technology and cooperation by creating the nation's first Amber Alert using EAS, and that local broadcasters' cooperation and leadership on public safety matters were much appreciated.<sup>221</sup> Another commenter stated that, without local broadcasters in North Carolina, there would be no Amber Alert system.<sup>222</sup> Witnesses at the Rapid City hearing discussed the arrangement there between broadcasters and the local government that provides local officials expedited access to local stations in times of emergency.<sup>223</sup> The commenter noted that local broadcasters have made their studios available to emergency management for the purpose of recording public service announcements ("PSAs"), and have helped with the distribution of the PSAs to other outlets in the area.<sup>224</sup>

84. Other commenters indicated that there was still some work left to do to make the broadcast of emergency information easier and more effective. One commenter stated that emergency services management relies on local media to get its information to the public, but that local broadcast stations are getting more automated.<sup>225</sup> As a result, such management has an

<sup>218</sup> *NOI*, 19 FCC Rcd at 12435-36 ¶28.

<sup>219</sup> *Id.* at 12435-36 ¶ 29.

<sup>220</sup> Comments of United Radio Broadcasters of New Orleans (Dec. 8, 2005) at 2. The commenter noted how local radio stations worked together to give New Orleans and the surrounding community the "information, hope, and reassurance when it was needed most desperately by local residents." *Id.*

<sup>221</sup> Testimony of Jay Kimbrough, Director of Homeland Security for the State of Texas (San Antonio Tr. 17).

<sup>222</sup> Testimony of Bob Forcello (Charlotte Tr. 109).

<sup>223</sup> Statement of Park Owens, Director of Emergency Management, Rapid City and Pennington County, South Dakota (Oct. 20, 2006); Testimony of same (Rapid City Tr. 57-59); Testimony of Rapid City, South Dakota Mayor Jim Shaw (Rapid City Tr. 107).

<sup>224</sup> *Id.* At the Washington, D.C. localism hearing, the NAB offered testimony describing the efforts of local television stations in the wake of the wildfires that recently plagued much of California. *See* Testimony of Marcellus Alexander, Executive Vice President for Television, National Association of Broadcasters (Washington, D.C. Tr. 23-27).

<sup>225</sup> Testimony of Harry B. Robins, Emergency Services Manager for Monterey County (Monterey Tr. 130-31).

increasingly difficult time getting emergency information to the public late at night or early in the morning because many stations are controlled from a remote location.<sup>226</sup> The commenter also lamented the fact that there is no mechanism in place for local emergency management services to be informed of call station changes, licensee changes, points of contact changes, and that emergency management officials need more interface with the media on public service announcements.<sup>227</sup> Another noted that broadcasters did a reasonable job providing information related to storm warnings and Amber Alerts, but was concerned about stations that were unattended because repeating or updating the warning from EAS at an unattended station would depend on how the automatic alert function on the EAS decoder was set.<sup>228</sup> Another commenter opposed permitting local and state emergency managers unfettered access to broadcast station facilities.<sup>229</sup> Another urges the Commission to ensure that physical plant and staffing policies allow emergency officials access to stations, yet allow broadcasters to continue the critical journalistic role that stations play, particularly in times of emergency.<sup>230</sup>

85. Based on the foregoing criticisms, several commenters offered proposals for how the Commission could improve the efficiency and effectiveness of the distribution of emergency information to the public through local broadcasters. These proposals included taking action on the outstanding EAS Further Notice of Proposed Rulemaking<sup>231</sup> and reducing the ability of broadcasters to control their programming from a remote location.<sup>232</sup>

### 3. Issues for Commission Action

86. *Emergency Alert System Rulemaking.* The record in this proceeding reaffirms the importance the public places on timely and accurate emergency information on broadcast stations. We intend to take action on the pending *EAS FNPRM*. Specifically, as we have previously stated, we are prepared to address the issues in that proceeding within six months.<sup>233</sup> Comments received in that proceeding will be considered to resolve those issues.

87. *Remote Radio Station Operation.* Commenters also expressed concerns regarding the prevalence of automated radio broadcast operations, which allow the operation of stations without a local presence, and the perceived negative impact that they have on licensees' ability to serve local needs. As we previously indicated, in the Digital Audio proceeding, we are looking into whether we should require a physical presence at a broadcasting facility during all hours of

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<sup>226</sup> *Id.* at 131

<sup>227</sup> *Id.* at 132.

<sup>228</sup> Comments of Thomas C. Smith (Nov. 2, 2004) at 3-4.

<sup>229</sup> Comments of Washington State Association of Broadcasters (Oct. 28, 2004) at 20-21.

<sup>230</sup> NFCB Reply Comments at 16.

<sup>231</sup> *Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, Petition for Immediate Relief*, Second Report & Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 13275 (2007) ("*EAS FNPRM*").

<sup>232</sup> Testimony of Harry B. Robins, Emergency Services Manager for Monterey County (Monterey Tr. 131).

<sup>233</sup> *EAS NPRM* at 13295 ¶ 41.

operation.<sup>234</sup> While the issue as it pertains to radio will be resolved in that proceeding, as discussed in paragraph 29 *supra*, we seek comment here on whether such a requirement should also be imposed on television licensees.

## F. NETWORK AFFILIATION RULES

### 1. Issues

88. As noted in the *NOI*, the relationship between television networks and their affiliated stations carries implications regarding the ability of those licensees to promote and preserve localism.<sup>235</sup> Several existing Commission rules govern the network-affiliate relationship, the general goal of which is to ensure that local stations remain ultimately responsible for programming decisions, notwithstanding their affiliation with a national programming network. Two mandates in particular are noteworthy in this context. First, under the “right to reject” rule, licensees are barred from becoming parties to a network affiliation agreement that “prevents or hinders the station from: (1) [r]ejecting or refusing network programs which the station reasonably believes to be unsatisfactory or unsuitable or contrary to the public interest, or (2) [s]ubstituting a program which, in the station’s opinion, is of greater local or national importance.”<sup>236</sup> Second, the “time option” rule effectively prohibits any affiliation agreement term that “provides for optioning of the station’s time to the network organization, or which has the same restraining effect as time optioning,” meaning a term that “prevents or hinders the station from scheduling programs before the network agrees to utilize the time during which such programs are scheduled, or which requires the station to clear time already scheduled when the network organization seeks to utilize the time.”<sup>237</sup>

89. The meaning and scope of the network affiliation rules have been matters of dispute between the major broadcast networks and independently owned affiliates in recent years. Disagreements first came to the Commission’s attention in 2001, when the Network Affiliated Stations Alliance (“NASA”) filed a Petition for Inquiry into Network Practices,<sup>238</sup> asking whether certain alleged practices of the top four television networks<sup>239</sup> involving their affiliates were consistent with the Commission’s network rules, the Communications Act, and the public interest. NASA shortly thereafter filed a Motion asking the Commission to issue a declaratory ruling “as to specified affiliation agreement provisions whose lawfulness – disputed by the networks and NASA – turns on the proper interpretation of the Communications Act and Commission rules.”<sup>240</sup> In response, the networks argued, *inter alia*, that (1) NASA sought, in

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<sup>234</sup> See *supra*, paras. 28-29.

<sup>235</sup> See *NOI*, 19 FCC Rcd at 12436 ¶ 30.

<sup>236</sup> 47 C.F.R. § 73.658(e).

<sup>237</sup> *Id.* § 73.658(d).

<sup>238</sup> Petition for Inquiry Into Network Practices filed by Network Affiliated Stations Alliance (Mar. 8, 2001).

<sup>239</sup> Those networks are: ABC, CBS, NBC and FOX.

<sup>240</sup> Motion for Declaratory Ruling filed by Network Affiliated Stations Alliance (June 22, 2001) (the “NASA Motion”). In that Motion, NASA alleged that the Networks: (1) assert excessive control over affiliates’ programming decisions; (2) assert excessive control over affiliates’ digital spectrum; and (3) use their affiliation to interfere with or manipulate station sales in a manner inconsistent with section 310(d) of the Act. *Id.* at 11.



essence, an amendment of the right-to-reject rule to give affiliates the “absolute” power to avoid their contractual obligations; (2) the evidence does not support NASA’s argument that major networks have asserted excessive control over affiliates’ programming decisions; and (3) the affiliation agreements contain language that expressly acknowledges that affiliate stations have a right to reject.<sup>241</sup> In January 2005, NASA filed an update to the record in which it stated that each network had reformed its contracts to address the central issues raised by the affiliates.<sup>242</sup> NASA also renewed its request for Commission action, however, seeking to clarify the meaning of the existing network/affiliate rules, consistent with the reformed affiliation agreements. In addition, NASA urged the Commission to provide other guidance that would help prevent similar disputes from arising in the future.<sup>243</sup> The proceeding remains pending.

90. In the *NOI*, issued in the midst of this dispute, the Commission expressed its concern over some licensees’ claims that the networks have hindered affiliated stations’ ability to preempt Network shows for local programming. The Commission expressed concern about allegations that affiliates are hindered in their ability to refuse to broadcast network programming that is indecent or otherwise deemed to be unsuitable for the station’s local community.<sup>244</sup>

## 2. Public Comments

91. A relatively small number of commenters explicitly discussed the network-affiliate relationship or the relevant Commission rules; a larger number – generally members of the public – voiced concern about network-supplied programming generally.<sup>245</sup> Of those who addressed the network affiliation rules, several stated that affiliation agreements undercut the ability of individual station licensees to exercise their discretion to program their stations to meet local needs and problems. For example, a group owner testified at the Monterey hearing that the NASA Motion highlighted the “true realities” of the network-affiliate relationships, including the contractual disincentives that make affiliates reluctant to preempt network programming.<sup>246</sup> He called upon the Commission to act on the NASA Motion and thereby help to prevent local stations from becoming passive conduits of national network fare, thereby disserving their local viewers.<sup>247</sup> Similarly, the director of the local chapter of the Parents Television Council testified at the Commission’s San Antonio localism hearing that local broadcasters appear to have

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<sup>241</sup> See, *NOI*, 19 FCC Rcd at 12436, n. 73, and pleadings filed by various networks in the NASA proceeding cited therein.

<sup>242</sup> Third Update of Record and Continued Request That Commission Issue Declaratory Ruling on Basic Principles filed by Network Affiliated Stations Alliance (Jan. 19, 2005).

<sup>243</sup> *Id.*

<sup>244</sup> *NOI*, 19 FCC Rcd at 12437 ¶ 32.

<sup>245</sup> See, e.g., Comments of William Yeager (Nov. 1, 2004) at 1 (“make it easier for network television stations to preempt network programming. This will provide the biggest boost to localism on television.”). Another commenter praised the preemption of objectionable network programming by certain affiliated stations. Statement of John Rustin, North Carolina Family Policy Council (Oct. 22, 2003) at 1.

<sup>246</sup> Testimony of Harry Pappas, President and CEO, Pappas Telecasting Companies (Monterey Tr. 97-99).

<sup>247</sup> *Id.* at 97-98.

subordinated their obligation to serve the public interest in favor of yielding entirely to the will of the national networks.<sup>248</sup> He commented that some affiliates have indicated that they cannot view in advance network programs and others are afraid to preempt network programs for fear of non-renewal of their affiliation agreements. He urged the Commission to grant the NASA Motion in order to better empower affiliates to preempt programming that they find objectionable or otherwise not in the interest of their local audiences.<sup>249</sup>

92. Capitol Broadcasting Company, Inc. (“Capitol”), which advocates adoption of a number of behavioral rules concerning local programming,<sup>250</sup> called for the establishment of the right of affiliates to review network programming before airtime in order to determine whether the material serves the licensee’s community.<sup>251</sup> Capitol states that, if network affiliation agreements do not grant pre-airtime review of programming as a contractual right, the Commission should adopt rules to support such a right.

93. Other commenters, however, state that existing network-affiliate relationships pose no impediments to the ability of licensees to control their own programming decisions and thereby serve the needs and interests of their viewers. For example, the Walt Disney Company, parent of the ABC Network, states that its affiliates have never been prevented or hindered from preempting network shows in accordance with the right-to-reject rule.<sup>252</sup> It cites to the record in the NASA proceeding, including listings of affiliate preemptions filed with the Commission, as support for its contention that “there simply is no basis for the Commission to express any concern over NASA’s unsubstantiated and unproven claims.”<sup>253</sup> Several broadcasters noted specific examples of their preemptions of network programming in order to air material they deemed more important for their audiences, including emergency information.<sup>254</sup>

### 3. Issues for Commission Action

94. We agree with commenters’ concern over the relationship between broadcast networks and the independently owned stations affiliated with them because of the adverse impact that some reported practices may have on the ability of licensees to fulfill their localism

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<sup>248</sup> Testimony of Ray Rossman, Director of the San Antonio Chapter of the Parent’s Television Council (San Antonio Tr. 55-60).

<sup>249</sup> *Id.* at 58.

<sup>250</sup> Capitol Comments at 5 (urging, *e.g.*, adoption of a required minimum number of hours of local programming, including public affairs material).

<sup>251</sup> *Id.* at 5; *see also* Testimony of Jim Goodmon, President and CEO, Capitol Broadcasting Company, Inc. (Charlotte Tr. 144-45).

<sup>252</sup> Disney Comments (Nov. 1, 2004) at 19-20.

<sup>253</sup> *Id.* at 20.

<sup>254</sup> *See, e.g.*, Comments of Rosetta Rolan, WAVY-TV, Portsmouth, Virginia (Nov. 1, 2004) at 2 (preempting for coverage of Hurricane Isabel); Comments of Joseph P. McNamara, WBNG-TV, Binghamton, New York (Oct. 21, 2004) at 2 (preempting for programming of more local interest); Comments of WBRZ, Baton Rouge, Louisiana (Nov. 16, 2004) at 4 (preempting for local political events, parades, charitable fundraising, and crime safety programs); Comments of WISC-TV, Madison, Wisconsin (Nov. 23, 2004) at 2 (preempting for political debates and University of Wisconsin sporting events); Testimony of Michael Ward, General Manager, WNCN-TV, Raleigh-Durham, North Carolina (Charlotte Tr. 140) (preempting for mayoral debates).

obligations. We believe that it is critical to maintain a balance in the network-affiliate relationship that affords local broadcasters ultimate power over programming decisions without risking undue financial hardship or implicit threats of unanticipated disaffiliation, so that they retain unfettered discretion to select what they air, including network-provided programming. For that reason, we reiterate here that the Commission will act promptly to enforce its network affiliation rules whenever complaints are filed. Those rules include, but are not limited to, the right-to-reject rule, 47 C.F.R. § 73.658(e), and that imposing restraints on time optioning, 47 C.F.R. § 73.658(d).

95. As many commenters urge, we intend to resolve the proper scope and meaning of these rules in the content of the pending NASA Motion. Although NASA has revised its requests to the Commission over time to reflect the laudatory reformation of certain network affiliation agreements, the affiliates continue to urge that we reaffirm key principles underlying the existing rules and adopt additional guidance that should assist in preventing future disputes.

96. Finally, we agree with many commenters and seek comment on whether it would be useful for licensees, in fulfilling their localism obligations, to be able to review network programming sufficiently in advance of airtime to determine whether the programming is unsatisfactory, unsuitable or contrary to the public interest.<sup>255</sup> Our record to date provides little information as to whether network affiliation agreements currently afford licensees the right to review in advance network programming, or whether current practices allow for such meaningful review. Therefore, although we do not seek comment here on the matters raised in the NASA Motion, we do seek comment here on this limited issue of affiliate review of network programming. Has the matter of affiliate preview of network programming already been addressed by existing affiliation agreement terms? To the degree that such private contractual arrangements have not addressed this issue, we seek input on whether the Commission should establish rules requiring such a right. How long in advance would affiliates need to receive program recordings in order to have time for a meaningful review and preemption? What difficulties would this pose for networks? By definition, live events cannot be previewed. Are there any other types of programs that should be exempted from the requirement? We note that the right to reject rule is stated as a restriction on licensees entering into contracts that restrict their right to reject programming. Should our rules similarly prohibit an affiliate from waiving its right to advance review, consistent with its nondelegable responsibility for the programming that it airs? Proponents of a right-to-advance-review mandate should also discuss the statutory basis for the Commission's authority to act on this matter.

## **G. PAYOLA / SPONSORSHIP IDENTIFICATION**

### **1. Issues**

97. *Sponsorship Identification.* As discussed in the *NOI*, the Commission's sponsorship identification rules are designed to alert listeners and viewers of a broadcast station to the fact that they are hearing or watching programming for which valuable consideration has been provided by ensuring that the station discloses that fact.<sup>256</sup> As the Commission stated in *United States Postal Service*, the sponsorship identification requirement is "based on the

<sup>255</sup> See 47 C.F.R. § 73.658(e)(1).

<sup>256</sup> *NOI*, 19 FCC Rcd at 12437 ¶ 33.

principle that the public has the right to know whether the broadcast material has been paid for and by whom.”<sup>257</sup> These provisions are found in Sections 317 and 507 of the Communications Act.<sup>258</sup> Section 507 requires those persons who have provided, accepted, or agreed to provide or accept consideration for the airing of certain program material to report that fact to the station licensee before the involved matter is broadcast.<sup>259</sup> In turn, Section 317 requires the licensee to announce, at the time of broadcast, that consideration has been provided for matter contained in the program, and to disclose the identity of the person furnishing the money or other valuable consideration.”<sup>260</sup> Section 73.1212 of the Commission’s rules implements the requirements of Section 317 for broadcasters.<sup>261</sup>

98. *Payola/Pay-for-Play.* As an outgrowth of the sponsorship identification rules, the Commission has defined “payola” as “the unreported payment to, or acceptance by, employees of broadcast stations, program producers and program suppliers of any money, services or valuable consideration to achieve airplay for any programming.”<sup>262</sup> The Commission observed in the *NOI* that some commenters had expressed the opinion that payola practices are particularly common with regard to the airplay of music, so-called “pay-for-play.” The Commission noted that the activity may involve “independent promoters” acting as a liaison between the radio stations and the record labels, so that the labels themselves do not make the payments to the stations. In the typical case, a promoter pays radio stations for the exclusive right to promote music to them, and charges record labels an upfront fee to market songs to radio stations, as well as additional fees for songs that stations add to their playlists that the promoter recommended. In other words, record labels pay promoters to market their music, and for music that stations actually play, and promoters pay stations to promote music to them, thus enabling the promoters to influence the songs that are included on the stations’ playlists. It was suggested that radio stations that have consolidated with concert promoters may tie airplay to concert performances, by refusing to give airplay to artists who do not appear at concerts sponsored by the stations. The Commission observed that these types of arrangements ultimately influence who chooses what the public hears on the radio and what station listeners may actually hear.<sup>263</sup>

99. The Commission observed in the *NOI* that such practices may be inconsistent with localism when they cause stations to air programming based on their financial interests, at the expense of their communities’ needs and interests.<sup>264</sup> The *NOI* sought comment on the various types of these practices today, and how frequently they occur. The Commission asked if

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<sup>257</sup> *United States Postal Service*, FCC 77-645, 41 RR 2d 877, 878 (1977) (citing *Sponsorship Identification*, 40 FCC 2 (1950)).

<sup>258</sup> 47 U.S.C. §§ 317, 508.

<sup>259</sup> 47 U.S.C. § 508.

<sup>260</sup> 47 U.S.C. § 317(a)(1).

<sup>261</sup> 47 C.F.R. § 73.1212. Particular requirements are imposed for the airing of political programming or that involving the discussion of a controversial issue of public importance. See 47 U.S.C. § 317(a)(2); 47 C.F.R. § 73.1212(d).

<sup>262</sup> *Commission Warns Licensees About Payola and Undisclosed Promotion*, Public Notice, 4 FCC Rcd 7708 (1988).

<sup>263</sup> *NOI*, 19 FCC Rcd at 12437-38 ¶ 34.

<sup>264</sup> *Id.* at 12437 ¶ 33.

these practices comply with the disclosure requirements of the Communications Act and our sponsorship identification regulations and if the existing rules are deficient in addressing the current practices. The Commission also sought comment on whether we should improve our enforcement process, by making it easier for complainants to file and for us to act on complaints, or otherwise. The *NOI* inquired if the Commission currently has the authority to regulate in this area, pursuant to its general Title III public interest authority over broadcasters and, if so, whether it should exercise that authority. The Commission also asked if the current disclosure requirements are sufficient to ensure that listeners understand the nature of the programming they hear.<sup>265</sup>

100. *Other Sponsorship Identification.* The provision of consideration for broadcast material involving the sponsorship identification rules is not limited to arrangements for the playing of music over radio stations. As noted *supra*, the rules are invoked whenever consideration is provided or promised for the airing of particular program matter. For example, the *NOI* observed that some television stations appear to have aired interviews with guests who pay for their appearances. In such cases, the station reportedly disclosed the payment at the end of the program in small type that ran for only a matter of seconds. The Commission asked for comment on a number of issues regarding the application and adequacy of the Commission's sponsorship rules in these circumstances.<sup>266</sup>

101. *Voice-Tracking.* The *NOI* also sought comment on voice-tracking, a practice by which stations import popular out-of-town personalities from bigger markets to smaller ones, customizing their programming to make it appear as if the personalities are actually local residents. The Commission observed that, by centralizing talent and creating name recognition, the practice would appear to enable stations both to decrease costs and increase ratings and thus revenue. The Commission observed that one commenter stated that the practice has potential adverse consequences for localism, in that, when a media company uses voice-tracking as a strategy to eliminate live broadcasts and local employees altogether, the station's connection to the local community may be hurt. Noting the agency does not have rules that directly address this practice, the *NOI* sought comment on what steps are necessary to preserve localism in this context, what our statutory authority is to adopt such regulations, and what particular practices should be defined as inconsistent with a broadcaster's programming obligations.<sup>267</sup>

102. *National Playlists.* The *NOI* also discussed the possible adverse effect on localism of national music playlists developed by large corporate radio licensees on the access of local talent to airtime. It was argued that, absent such access, local artists are stifled and localism accordingly suffers. The *NOI* sought comment on the prevalence of national playlists and their effect on localism. Specifically, the Commission inquired as to the extent that the use of such playlists prevents local stations from making independent decisions about airplay, thereby diminishing the diversity and types of music heard on the radio, including that performed by

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<sup>265</sup> *Id.* at 12438 ¶ 35.

<sup>266</sup> *Id.* at 12439 ¶ 36.

<sup>267</sup> *Id.* at 12440 ¶ 38.



local artists. The *NOI* asked what steps, if any, the Commission should take in this area to foster localism.<sup>268</sup>

## 2. Public Comments

103. *Payola/Pay-For-Play.* The American Federation of Television and Radio Artists and the American Federation of Musicians characterize pay-for-play as stations shutting local artists out of airplay, depriving audiences of emerging local artists and ultimately squelching innovation in American music.<sup>269</sup> A number of commenters also express concern about the prevalence of payola practices, and some urge that the Commission adopt additional rules in this area.<sup>270</sup> To the contrary, a number of station licensees and industry organizations state that, because concerns about payola are not warranted, additional regulation is not necessary.<sup>271</sup> One long-time broadcast technician indicated that the rules appear clear: when one airs something for payment, the payment must be disclosed.<sup>272</sup> The Future of Music Coalition urges the Commission to be more vigilant in enforcing the rules.<sup>273</sup>

104. *Other Sponsorship Identification.* The Commission did not receive a great number of comments regarding the operation of the sponsorship identification rules in matters other than music airplay. Brian Wallace supports strict and rigorous enforcement of these requirements. He indicates that sponsorship identification is important because it helps viewers identify the source of the information. In his view, if programs receive compensation for promoting something, disclosure of the arrangement should be made during the segment in question.<sup>274</sup>

105. *National Playlists.* A number of commenters stated that the use of national playlists by stations reduces the amount of airplay of local musicians.<sup>275</sup> The Future of Music

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<sup>268</sup> *Id.* ¶ 39.

<sup>269</sup> AFTRA/AFM Comments at 17-18; *see also* Comments of the National Academy of Recording Arts and Sciences (Nov. 1, 2004) (“NARAS Comments”) at 5, Attachment 2 (statements of music industry participants, including musicians, composers, entertainment attorneys, producers and others, regarding station practices).

<sup>270</sup> *See, e.g., id.* at 24-25; Reply Comments of American Federation of Musicians, American Federation of Television and Radio Artists, Future of Music Coalition, The Recording Academy and Recording Arts Coalition (Jan. 3, 2005) at 12; NARAS Comments at 3-4. At the Charlotte, North Carolina Localism hearing, recording artist Tift Merritt indicated that “it’s absolutely naive to think that pay for play doesn’t go on. There are elaborate ways of independent promotion, that this completely happens. . . I’ve heard of people getting a bill from a radio station when they are played.” Testimony of Tift Merritt (Charlotte Tr. 51-52); *see also* Testimony of Manny Garcia, Academy of Tejano Artists and Musicians (San Antonio Tr. 194-96); Testimony of Anthony Quintree (“payola does exist”) (Charlotte Tr. 121).

<sup>271</sup> *See, e.g.,* Clear Channel Comments at 31-32; NAB Comments at 53; Named State Broadcasters Associations Comments at 31-32.

<sup>272</sup> Comments of Thomas C. Smith (Nov. 2, 2004) at 4; *see also* Comments of The Cromwell Group, Inc. (d/b/a Cromwell Radio Group) (Nov. 1, 2004) at 4-5; Disney Comments at 19.

<sup>273</sup> Comments of Future of Music Coalition (Nov. 1, 2004) at 5.

<sup>274</sup> Comments of Brian Wallace (Aug. 18, 2004) at 4-5 (“We as the public have a right to know who is renting OUR airwaves from the people that are licensed to use it.”); *see also* AFTRA/AFM Comments at 17-18.

<sup>275</sup> Comments of Jack E. Rooney (Nov. 1, 2004) at 2-3; Comments of Richard Crandall (Mar. 16, 2004) at 1-2; Statement of Ray Benson, founder, “Asleep at the Wheel” and Board Member, Texas Chapter of The Recording

Coalition urges that the Commission require basic data from broadcasters indicating what songs they are playing and how they determine what makes their playlists.<sup>276</sup> Others say that, with ownership consolidation, the radio industry has become much less responsive to local musicians and programming increasingly homogenized.<sup>277</sup> Several other musicians related experiencing difficulty in getting their music played over local stations.<sup>278</sup> However, other witnesses praised the airplay of the music of local artists by area stations.<sup>279</sup> The statement of a local singer was submitted at the Portland hearing noting the continued willingness of local broadcasters to allow him to perform his songs on their stations.<sup>280</sup> Clear Channel indicated that it has no national playlists, that programming decisions are made at the local level by individual station managers, program directors and air talent using sophisticated research techniques.<sup>281</sup> A representative of Citadel Broadcasting similarly testified at the Portland hearing, stating that its stations' music programming decisions are made at the local level, with the goal of each station to serve its local community.<sup>282</sup> The Cromwell Group indicated that, while some of its stations have programs of local music, ultimately, a station must play whatever music its listeners want to hear.<sup>283</sup> The NAB claims that radio stations generally devote at least a portion of their programming to promoting local artists.<sup>284</sup>

106. *Voice-Tracking.* With regard to voice-tracking, some commenters also expressed concern about the practice,<sup>285</sup> while others indicated that no new regulations are necessary,<sup>286</sup>

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Academy (Oct. 20, 2006); Testimony of same (San Antonio Tr. 113-21); Testimony of Matthew Gonzalez (San Antonio Tr. 211-13); AFTRA/AFM Comments at 15-17 (adverse impact on local news coverage, ability of stations to provide emergency information, timeliness and local orientation of music programming); NARAS Comments at 3.

<sup>276</sup> Comments of The Future of Music Coalition (Nov. 1, 2004) at 5-6.

<sup>277</sup> Testimony of "Davey D" (Monterey Tr. 113-22); Testimony of Ray Hair, President, Dallas-Fort Worth Professional Musicians Association (San Antonio Tr. 129-36).

<sup>278</sup> Comments of Robert Peckman (Nov. 1, 2004); Comments of Douglas R. Stevens (Nov. 1, 2004); Testimony of Tift Merritt (Charlotte Tr. 37-41); Testimony of Anthony Quintee (Charlotte Tr. 121); Testimony of Jake Delily (Charlotte Tr. 119); Testimony of Mike Reardon (Rapid City Tr. 276-77); Statement of Ray Benson, founder, "Asleep at the Wheel" and Board Member, Texas Chapter of The Recording Academy (Oct. 20, 2006); Testimony of same (San Antonio Tr. 113-21); Testimony of Manny Garcia, Academy of Tejano Artists and Musicians (San Antonio Tr. 194-96); Comments of Michael Keegan (Nov. 1, 2004); Testimony of T.C. Smythe (San Antonio Tr. 156). Some witnesses testified that community radio is necessary to achieve music diversity. *See, e.g.,* Testimony of Leslie Shull (Monterey Tr. 178-79).

<sup>279</sup> *See, e.g.,* Testimony of Barb Evenson (Rapid City Tr. 148-50).

<sup>280</sup> Testimony of Lara Seaver of the Portland Radio Group, reading statement of local musician Don Campbell (Portland Tr. 159-60); *see also* Testimony of Spencer Albee (Portland Tr. 3-8); Testimony of Charlie Gaylord (Portland Tr. 137-39)

<sup>281</sup> Clear Channel Comments at 30.

<sup>282</sup> Testimony of Tim Moore, Citadel Broadcasting (Portland Tr. 153-54); Testimony of Herb Ivy, Citadel Broadcasting (Portland Tr. 64-66).

<sup>283</sup> Comments of The Cromwell Group (Nov. 1, 2004)

<sup>284</sup> NAB Comments at 58.

<sup>285</sup> NFCB Reply Comments at 19-20; AFTRA/AFM Comments at 15-17; Comments of Thomas C. Smith (Nov. 2, 2004) at 4; Comments of Bonnie Hutcheon (Aug. 23, 2004).

some questioning the Commission's authority to do so.<sup>287</sup> John Connolly of the American Federation of Radio and Television Artists testified at the Monterey hearing that voice-tracking "corrodes local service in many radio markets.... 70 percent of Clear Channel radio's broadcasts are voice-tracked from distant locations."<sup>288</sup> Another commenter indicated that the practice should be closely examined to the extent that it compromises local programming.<sup>289</sup> The NAB states that the use of voice-tracking has no discernable negative impact on localism, and allows stations to produce higher quality programming at lower cost.<sup>290</sup>

### 3. Issues for Commission Action

107. *Sponsorship Identification/Payola.* We agree with the many commenters who have expressed concern with reported practices throughout the broadcast industry that appear to violate our sponsorship identification rules. We also agree that we need to continue vigilant enforcement of our regulations, as well as impose strict penalties for violations of the rules.

108. We note that, particularly since the release of the *NOI*, the Commission has been aggressive in investigating all payola complaints that it has received that demonstrate that a question exists of whether such violations have occurred and sanctioning licensees found to have engaged in illegal conduct. For example, as a result of its investigation of allegations of payola/pay-for-play violations by a number of broadcasters, on April 13, 2007, the Commission released consent decrees that it entered into with four of the nation's largest radio group owners, CBS Radio, Inc., Citadel Broadcasting Corporation, Clear Channel Communications, Inc. and Entercom Communications Corp., calling for them to make payments to the U.S. Treasury of \$12,500,000, in the aggregate. These decrees also called for each company to institute a compliance plan containing numerous business reforms and compliance measures designed to prevent future violations, plans that, among other things, restricted the activities of independent promoters.<sup>291</sup> The Enforcement Bureau has a number of similar ongoing investigations and we will continue to aggressively proceed and take action, where appropriate.

109. The Commission has also acted when presented with other types of violations of the sponsorship identification rules. On April 13, 2005, the Commission issued a Public Notice reminding broadcast licensees of the critical role that broadcasters play in providing information to the audiences that they serve and reminding them and others of their obligations under the sponsorship identification rules in connection with the airing of video news releases ("VNRs"). Therein, the Commission expressed its intention to investigate any situation in which it appears

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<sup>286</sup> Reply Comments of Barnstable Broadcasting, Inc. (Jan. 3, 2005) at 2-3; Clear Channel Comments at 32.

<sup>287</sup> Reply Comments of the Arizona Broadcasters Association (Jan. 3, 2005) at 13-14.

<sup>288</sup> Testimony of John Connolly, American Federation of Radio and Television Artists (Monterey Tr. 106).

<sup>289</sup> Comments of James F. Evans (Oct. 21, 2004).

<sup>290</sup> NAB Comments at 53-55; *see also* Named State Broadcasters Associations Comments at 32; Comments of Randal J. Miller, President, Miller Communications, Inc. (July 12, 2004) at 3.

<sup>291</sup> *See CBS Radio, Inc.*, Order, 22 FCC Rcd 7026 (2007); *Citadel Broadcasting Corp.*, Order, 22 FCC Rcd 7045 (2007); *Clear Channel Communications, Inc.*, Order, 22 FCC Rcd 7064 (2007); *Entercom Communications Corp.*, Order, 22 FCC Rcd 7121 (2007).

that these rules have been violated and to order appropriate sanctions.<sup>292</sup> Since then, the Enforcement Bureau has so proceeded, aggressively investigating numerous complaints of wrongdoing and taking the required action. For example, in September 2007, the Enforcement Bureau issued two notices of apparent liability for forfeiture against Comcast Corporation for its airing of a number of video news releases without the requisite announcements.<sup>293</sup> On October 18, 2007, the Commission issued a notice of apparent liability against Sonshine Family Television, Inc. and Sinclair Broadcast Group, Inc.<sup>294</sup> for similar violations. Other investigations are currently underway.

110. Particularly as a result of our experience in these and other enforcement proceedings, and in light of the record here, we believe that our sponsorship identification rules are sufficient for our regulatory purposes and do not believe that we need to revise them, as proposed by some commenters, because they are sufficiently broad to cover the practices that they describe in the record. However, in the *VNR Notice*, the Commission sought public comment on the nature of practices by broadcasters that might invoke operation of the sponsorship identification rules.<sup>295</sup> The Commission has received numerous filings, and the Media Bureau is in the process of reviewing that record and considering whether additional action is appropriate. Although that proceeding inquired only about the airing of VNRs, if necessary, we can consider calling for additional comments from the public on a broader set of issues. We intend to consider a notice of proposed rulemaking to seek comment on current trends in embedded advertising and the efficacy of the current sponsorship identification regulations with regard to such forms of advertising.

111. *Voice-Tracking*. With regard to the concerns raised about the use by stations of voice-tracking, we seek comment here on the prevalence of voice-tracking and whether the Commission can and should take steps to limit the practice, require disclosure, or otherwise address it. We believe that such practices may diminish the presence of licensees in the communities and thus hinder their ability to assess the needs and interests of their local communities. As discussed above, we have sought comment in the Digital Audio Broadcasting proceeding on whether we should require that stations maintain a physical presence at radio broadcasting facilities during all hours of operation and seek comment in this proceeding on whether such a requirement should also apply to television licensees.<sup>296</sup>

112. *National Playlists*. Finally, we do not believe that the record supports our prohibiting the use of national music playlists by licensees, nor do we believe that we should affirmatively require stations to give airplay to local artists. However, we agree with those

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<sup>292</sup> *Commission Reminds Broadcast Licensees, Cable Operators and Others of Requirements Applicable to Video News Releases, and Seeks Comment on the Use of Video News Releases by Broadcast Licensees and Cable Operators*, Public Notice, 20 FCC Rcd 8593 (2005) (“*VNR Notice*”).

<sup>293</sup> *Comcast Corporation*, Notice of Apparent Liability for Forfeiture, DA 07-4005 (rel. Sept. 21, 2007); *Comcast Corporation*, Notice of Apparent Liability for Forfeiture, DA 07-4075 (rel. Sept. 26, 2007) (responses pending).

<sup>294</sup> *Sonshine Family Television, Inc. and Sinclair Broadcast Group, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 07-152 (rel. Oct. 18, 2007) (responses pending).

<sup>295</sup> *VNR Notice*, 20 FCC Rcd at 8596-97.

<sup>296</sup> *See supra*, para. 29.

commenters who express concern about the lack of access to the airwaves by local musicians. For this reason, we seek comment on whether we should require licensees to provide us data regarding their airing of the music and other performances of local artists and how they compile their stations' playlists, which we would use in our consideration of the renewal applications of the stations to which they relate, in evaluating the overall station performance under localism. We seek comment on the appropriate form for these disclosures and ask commenters to state what information should be supplied.

## **H. LICENSE RENEWAL PROCEDURES**

### **1. Issues**

113. The *NOI* noted that the license renewal process is "perhaps the most significant mechanism available to the Commission and the public to review the performance of broadcasters and to ensure that licensees have served their local communities."<sup>297</sup> The Commission's process for evaluating license renewal applications has changed greatly over the past 30 years. Most significantly, as part of the 1996 Telecommunications Act, Congress eliminated the Commission's authority to accept new station applications to compete with renewal filings and consider such mutually exclusive applications in comparative hearings, and increased the maximum term for a broadcast license to eight years.<sup>298</sup>

114. In response to the criticism expressed by some that the Commission does not examine thoroughly enough whether a licensee has served the public interest in deciding whether to renew its station license, the *NOI* called for comment on a number of questions relating to our license renewal system and how it might be improved. Specifically, the *NOI* asked commenters to address whether new procedures are needed to strengthen our license renewal process; whether the Commission should conduct audits of stations' issues/programs lists and public files; how we might make the license renewal process more effective; what the benefits and burdens of any proposals for change might be; and to generally address the boundaries of our authority to adopt such measures (particularly in light of the 1996 Telecommunications Act) and what the scope of our evaluation should be. The Commission also solicited suggestions for improving the involvement of broadcast stations in the community and asked commenters to address whether the current eight-year license renewal term is appropriate, or if the agency should adopt more frequent review of a station's record of performance.<sup>299</sup>

### **2. Public Comments**

115. The Commission received a number of comments addressing its license renewal procedures and responding to our request for suggestions on improving that process. Broadcasters and broadcaster organizations generally expressed their opposition to any modification of the procedures, several maintaining that, in the wake of the 1996 Telecommunications Act's revision of the renewal procedures, the Commission lacks the authority to do so.<sup>300</sup> However, other commenters, including many members of the public,

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<sup>297</sup> *NOI*, 19 FCC Rcd at 12440 ¶ 40.

<sup>298</sup> See 47 U.S.C. § 307(c).

<sup>299</sup> *NOI*, 19 FCC Rcd at 12441 ¶ 42.

<sup>300</sup> See, e.g., NAB Comments at 68; Named State Broadcasters Associations Comments at 32-33.



expressed at least some dissatisfaction with the current license renewal system. Many requested more stringent renewal standards, better public disclosure of how to participate in the renewal process, or both. In addition, a number of members of the public participating in the localism field hearings expressed a general sense that our license renewal process should be strengthened to promote greater accountability to the public on the part of broadcasters.<sup>301</sup> The streamlined license renewal procedures that the Commission adopted in the 1980s elicited particular criticism from some commenters. For example, one stated that the license renewal process should “involve more than a returned postcard.”<sup>302</sup> Similarly, at the Commission’s hearing in Monterey, a panelist offered comments criticizing the current license renewal system and stating that stations should be held accountable for their records of public service at renewal time.<sup>303</sup>

116. In response to our questions in the *NOI* about whether the length of time between renewals should be shortened or periodic mid-term reviews of a station’s public service should be imposed, broadcasters generally advocated no change.<sup>304</sup> However, others urged more frequent review of licensee performance. One filer commented that eight years is too great a period between renewals. “Reviews that are spanned too far apart cannot adequately monitor the current status of any broadcasting entity.” He advocated shorter licensing terms and more frequent Commission review of licensee performance.<sup>305</sup>

117. In addition to general criticisms and calls for improvements to the license renewal process, several commenters suggested specific measures for the Commission to consider. Several argued that the Commission should take steps to improve public awareness of a licensee’s record of service to local needs by requiring enhanced disclosure by broadcasters. The American Federation of Television and Radio Artists and the American Federation of Musicians urged that Commission should adopt a standardized form that would require licensees to disclose the types and quantity of local programming aired during the license period. They also recommended that broadcasters’ public files should be made available on the Internet.<sup>306</sup> The Campaign Legal Center and the Alliance for Better Campaigns likewise argued in favor of adoption of a standardized form for stations to use in reporting their records of local programming service,<sup>307</sup> and advocated the use of a form similar to the standard form proposed by the Public Interest, Public Airwaves Coalition in the Commission’s Enhanced Disclosure proceeding.<sup>308</sup> Ronda Orchard suggested that a “mandate requiring that public hearings on

<sup>301</sup> See, e.g., Testimony of Jeff Perlstein, Executive Director, Media Alliance (Monterey Tr. 64); Testimony of Tony Acosta (Monterey Tr. 229); Testimony of Kathy Bissi (Monterey Tr. 230-31).

<sup>302</sup> Comments of John P. Valentine (Oct. 18, 2004) at 1.

<sup>303</sup> Statement of Martin Kaplan, Associate Dean, Annenberg School for Communication, University of Southern California (July 21, 2004) at 3; Testimony of same (delivered by Joseph Salzman, Associate Dean, Annenberg School for Communication, University of Southern California) (Monterey Tr. 62-68).

<sup>304</sup> See, e.g., NAB Comments at 63-64; Named State Broadcasters Associations Comments at 32-34.

<sup>305</sup> Comments of Brian Wallace (Aug. 18, 2004) at 5; see also Testimony of Andrew Schwartzman, President and CEO, Media Access Project (Washington, D.C. Tr. 43).

<sup>306</sup> AFTRA/AFM Comments at 25-26.

<sup>307</sup> Campaign Comments at 6; Reply Comments of the Campaign Legal Center and the Alliance for Better Campaigns at 16-19.

<sup>308</sup> *Enhanced Disclosure NPRM*, 15 FCC Rcd 19816 (2000).

service and community needs assessment [should] be conducted and published for comment, criticism and resolution.”<sup>309</sup>

118. The National Federation of Community Broadcasters commented that “local and community-responsive programming should be considered when determining renewals of licenses,” and suggested that the Commission should adopt a point system regime similar to the point system currently used to award noncommercial educational FM and television permits between mutually exclusive applicants.<sup>310</sup> Commenter Sam Brown proposed a similar point system for assessing a licensee’s overall commitment to localism.<sup>311</sup>

119. In addition to the commenters proposing formalized localism point systems, several others suggested that the Commission adopt specific standards for service to local needs and that a station’s license should not be renewed if the licensee fails to meet those standards. In addition to their recommendation that the Commission adopt a standard form for enhanced disclosure of a station’s service of local needs, the Campaign Legal Center and the Alliance for Better Campaigns argued that the agency should amend its license renewal procedures to include processing guidelines taking into account the station’s record of performance.<sup>312</sup> Specifically, they proposed processing guidelines that would allow expedited license renewals for stations that air a minimum of three hours per week of local civic/electoral affairs programming, at least half of which aired in or near prime time.<sup>313</sup> The Annenberg School for Communication at the University of Southern California argued that the Commission should require broadcasters to provide access to a station’s public inspection file online and in a standard format so that the public may evaluate the extent to which stations are serving their local communities.<sup>314</sup> It stated that adoption of such a measure would allow quantitative measurement of a station’s record of localism. It also recommended that broadcasters be required to include in their online public files archives of selected audio and video programming excerpts. The Brennan Center for Justice, *et al.* argued that the Commission should “conduct rigorous review of licensee performance in all aspects of diversity and localism” and, if a station is found deficient, its license should be revoked and reassigned to community interest media organizations.<sup>315</sup>

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<sup>309</sup> Comments of Ronda Orchard (Sept. 20, 2004) at 3.

<sup>310</sup> National Federation of Community Broadcasters Comments at 16-17.

<sup>311</sup> Comments of Sam Brown (Nov. 1, 2004) at 4.

<sup>312</sup> Reply Comments of the Campaign Legal Center and the Alliance for Better Campaigns (Jan. 3, 2005) at 19-22.

<sup>313</sup> *Id.* at 19-20. As noted in the *NOI*, until the deregulation of radio and television in the 1980s, the Commission authorized the staff to act, by delegated authority, on renewal applications for stations that had aired at least minimum amounts of specified programming, expressed as percentages of their overall programming. Applications for stations that failed to meet these thresholds were considered, on a less streamlined basis, by the full Commission. At the time that these guidelines were eliminated, they were: eight percent non-entertainment programming (including news, public affairs, and other non-entertainment programming) for AM stations; six percent of such programming for FM stations; and, for TV stations, ten percent non-entertainment programming, five percent local programming and five percent informational (news plus public affairs) programming. *NOI*, 19 FCC Rcd at 12430 ¶12, n.34.

<sup>314</sup> Annenberg Comments at 2-7.

<sup>315</sup> Brennan Center Comments at 35.

120. Not all of the comments received by the Commission argued in favor of imposing additional requirements on broadcasters. Commenter Thomas G. Smith, who identifies himself as a technician employed in the broadcast industry for the past 35 years, described the current license system as “realistic,” but suggested that the Commission articulate and hold licensees to a specific standard of conduct. He also urged that the Commission offer aid to broadcasters to assist them in meeting their public service obligations because “[p]ublic file and renewal standards can be confusing and can cost stations money in fines and possibly their license[s].” He suggested that the Commission help broadcasters meet their obligations with increased communication to licensees and training seminars conducted by the Commission or through industry trade groups. He further argued that disruption of service to the public that would occur as a result of a station losing its license may be as harmful a result as having “a station that does not meet or barely meets its obligations” remain on the air.<sup>316</sup>

### 3. Issues for Commission Action

121. *Shortened License Terms.* We are not persuaded by some commenters’ suggestions that the Commission shorten broadcast license terms to some period less than the eight years that Congress authorized in the Telecommunications Act of 1996.<sup>317</sup> Although we agree that many of the issues that commenters have raised in this proceeding merit Commission action, we believe that the behavioral rules proposed in this Report or adopted or under consideration in the other dockets noted herein will be sufficiently effective in addressing those concerns.

122. *Enhanced Disclosure.* We agree with some commenters that there is an apparent disconnect between broadcasters’ localism efforts and community awareness of those efforts. We further note that, because we concluded in the *Enhanced Disclosure Order* that our current requirements are not sufficient, we adopted a standardized form to provide information on how stations serve the public interest.<sup>318</sup> These new requirements, discussed in further detail at paragraphs 20-23 of this Report, will help educate the public about existing local programming and assist in our renewal proceedings.

123. *Increased Public Involvement in Renewal Proceedings.* We agree that, as we note at paragraph 15 of this Report, the record of this proceeding indicates that many members of the public are unaware of the mechanisms that are already available to them in terms of participation in the license renewal process. We find the observation of Thomas G. Smith that the Commission’s “public file and renewal standards can be confusing” is a point well taken, particularly with respect to members of the general public who may be unfamiliar with broadcast industry practices and may find parsing Commission regulations on the subject a daunting task. Accordingly, as also described in paragraphs 18-19 above, the Commission directs the Media Bureau to update its “The Public and Broadcasting” publication to provide more straightforward guidance to the public on how individuals can directly participate in the license renewal process,

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<sup>316</sup> Comments of Thomas C. Smith (Nov. 1, 2004) at 5.

<sup>317</sup> See Pub. L. No. 104-104, § 203, 110 Stat. 56, 112 (1996); see, e.g. Testimony of Andrew Schwartzman (Washington, D.C. Tr. 43).

<sup>318</sup> See *Enhanced Disclosure Order*.

and will establish a Commission point of contact at which members of the public can seek information about our processes.

124. *Renewal Application Processing Guidelines.* We believe that the recommendations set forth by the Campaign Commenters, USC Annenberg and the Brennan Center for Justice, *et al.* concerning the potential adoption of specific guidelines for broadcasters to follow may have merit and deserve further exploration. Accordingly, as stated in paragraph 40 *supra*, we tentatively conclude that we should reintroduce specific procedural guidelines for the processing of renewal applications for stations based on their localism programming performance. We seek comment on this proposal. Specifically, should these guidelines be expressed as hours of programming per week or, as in the past, percentages of overall programming? Should the guidelines cover particular types of programming, such as local news, political, public affairs and entertainment, or simply generally reflect locally-oriented programming? What should the categories and amounts or percentages be? Should we adopt processing guidelines regarding specific types of locally-oriented programming to be aired at particular times of the day? Should the Commission create other renewal processing guidelines that give processing priority to stations that meet certain measurable standards? How should we define local programming? Must it be locally produced? We seek comment on these questions and invite comment on any related issues that commenters feel the Commission should consider in connection with the possible adoption of specific localism processing guidelines for broadcast renewal applications.

## **I. ADDITIONAL SPECTRUM ALLOCATIONS**

### **1. Issues**

125. In the *NOI*, the Commission noted that, in order to enhance the availability of community-responsive programming, it created new broadcasting services, including, in 2000, the low power FM (“LPFM”) service. It observed that LPFM stations are smaller noncommercial stations that may broadcast at a maximum power of 100 watts, which corresponds to a coverage area of approximately a 3.5 mile radius from the transmitter. The *NOI* stated that, during the first two years that LPFM licenses were available for application, eligibility for licenses was limited to local entities. In addition, to similarly enhance the localism of the service, in the case of mutually exclusive applications for LPFM stations, the Commission grants the license to the applicant with the greatest number of points, providing comparative point credit to applicants that have had an established community presence for two years preceding their application and those that pledge to originate locally at least eight hours of programming per day.<sup>319</sup>

126. The Commission further observed that, in 2000, Congress passed an Act requiring the Commission to prescribe additional channel spacing requirements for LPFM stations, and thus provide existing FM stations greater interference protection, effectively limiting the number of LPFM stations that can fit within the FM band. Congress also instructed the Commission to conduct an experimental program to evaluate whether LPFM stations would interfere with existing FM stations if the LPFM stations were not subject to these additional channel spacing requirements, and to report to Congress with recommendations to reduce or eliminate the

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<sup>319</sup> *NOI*, 19 FCC Rcd 12441-42 ¶ 43.

minimum separations for third-adjacent channels. After such a study had been completed, the Commission recommended that Congress “modify the statute to eliminate the third-adjacent channel distant separation requirements for LPFM stations.”<sup>320</sup>

127. In the *NOI*, the Commission sought comment on what additional steps should be taken to promote LPFM further, and how best to harmonize our licensing processes for FM translators and LPFM stations to enhance localism.<sup>321</sup> In March 2005, the Commission released a *Second Order on Reconsideration and Further Notice of Proposed Rulemaking* as part of its ongoing efforts to promote the operation and expansion of LPFM service.<sup>322</sup> In the *LPFM Second Order*, the Commission made minor changes to the LPFM rules, including a clarification that “local program origination” does not include the airing of satellite-fed programming.<sup>323</sup>

128. The accompanying *LPFM FNPRM* sought comment on a number of issues related to ownership and eligibility restrictions for LPFM licensees, as well as technical matters related to the LPFM service and interference priorities. The Commission asked whether LPFM licenses should be assignable or transferable and whether the temporary restrictions on the multiple ownership of LPFM stations and on non-local ownership should be extended or allowed to sunset.<sup>324</sup> Because “introducing some level of transferability to the LPFM service is critical,” the Commission delegated to the Media Bureau the authority to waive the prohibition on the assignment or transfer of a LPFM station contained in Section 73.865 of the Rules on a case-by-case basis and cited examples of circumstances in which the grant of such a waiver might be appropriate.<sup>325</sup> The Commission also proposed certain changes to the Rules governing the formation and duration of voluntary and involuntary time-sharing arrangements among mutually exclusive LPFM applicants.<sup>326</sup> The *LPFM FNPRM* also sought comment on the relationship between the LPFM and full-power FM services. Noting that thousands of FM translator applications remained pending from the 2003 filing window, the Commission froze the processing of those applications and sought comment on possible adjustments to the co-equal status of LPFM stations and FM translators with regard to interference between them.<sup>327</sup> The

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<sup>320</sup> *Id.* at 12442 ¶ 44.

<sup>321</sup> *Id.* FM translators were originally envisioned as a “fill-in” service for full-power FM stations. *See* 47 C.F.R. § 74.1231(a). The Commission permits noncommercial FM translators operating in the bands reserved for noncommercial FM stations to be fed programming by satellite from commonly owned stations, with the result that their associated stations may be many miles away. *See* 47 C.F.R. § 74.1231(b). FM translators are not permitted to originate programming themselves, except under limited circumstances. *See* 47 C.F.R. § 74.1231(g). LPFM stations, by contrast, often originate local programming, because the mechanism we use to resolve mutually exclusive LPFM applications awards a point to applicants that “pledge to originate locally at least eight hours of programming per day.” *See* 47 C.F.R. § 73.872(b)(3).

<sup>322</sup> *Creation of Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763 (2005) (“*LPFM Second Order*” and “*LPFM FNPRM*”).

<sup>323</sup> 47 C.F.R. § 73.872(b)(3).

<sup>324</sup> *LPFM FNPRM*, 20 FCC Rcd at 6770-73 ¶¶ 17-23. *See* 47 C.F.R. §§ 73.853(b) (restricting applicant pool to local applicants for the first two years after LPFM licenses are made available for application); 73.855(b) (setting forth the phased-in ownership restrictions for LPFM).

<sup>325</sup> *See LPFM FNPRM*, 20 FCC Rcd at 6772 ¶ 20.

<sup>326</sup> *Id.* at 6774 ¶¶ 24-25.

<sup>327</sup> *Id.* at 6777-81 ¶¶ 31-36.



Commission also sought comment on whether LPFM stations should be protected from interference from subsequently authorized FM facilities.<sup>328</sup>

## 2. Public Comments

129. The record in this proceeding, as well as that in the LPFM docket, reflects widespread support for the service and measures that would enhance the stability and growth of LPFM. Commenters state that the creation of the LPFM service has provided an important outlet for the expression of community needs and interests, and the creation of locally oriented, community-responsive programming. A Ph.D. candidate whose dissertation research centers on the phenomenon of LPFM and its impact on local communities, focusing on LPFM Station KRBS-LP in Oroville, California, reports that in an era of decline in civic participation, those volunteering at the station report a feeling of increased civic engagement and participation. The station has developed programming of local interest, including new and valuable information for the sizeable immigrant population in the area.<sup>329</sup> Another commenter from Carbondale, Illinois, praised the all-volunteer LPFM station in his community, which provides a broad representation of the many cultures of the international students that have come from around the world to study in Carbondale, and local news and sports events that would otherwise be unavailable.<sup>330</sup> Many commenters noted the presence of local music on LPFM facilities;<sup>331</sup> one stated that “[i]t would be an injustice to disallow the public a right to expand its LPFM participation.”<sup>332</sup> A speaker at the Washington, D.C. hearing noted the five-year partnership between LPFM Station WRIR and the City of Richmond, Virginia, its community of license, to provide local emergency officials the ability to immediately provide emergency information in times of crisis.<sup>333</sup>

130. Other commenters provided suggestions for improving the viability of the LPFM and low power television (“LPTV”) services, and other ways of enhancing localism through the

<sup>328</sup> *Id.* at 6780-81 ¶¶ 37-39. As discussed in paragraphs 131-39 of this Report, by a Third Report and Order and Second Further Notice of Proposed Rulemaking released on December 11, 2007, we have adopted “a series of wide-ranging rule changes to strengthen and promote the long-term viability of the LPFM service and the localism and diversity goals that this service was intended to advance.” *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, FCC 07-204 (MM Docket No. 99-25) ¶ 72 (rel. Dec. 11, 2007) (“*LPFM Third R&O*” and “*LPFM SFNPRM*”). Therein, the Commission also sought additional comment on various technical issues, including LPFM-FM translator interference priorities. *Id.* at ¶¶ 72-84.

<sup>329</sup> Reply Comments of J. Zach Schiller (Jan 3, 2005) at 1-2; Testimony of same (Monterey Tr. 221-23); *see also* Testimony of Margaret Avenier (Portland Tr. 117-19); Testimony of Tim Stone, Founder, Station WSCA-LP (Portland Tr. 37-39); Testimony of Emily Sapienza, General Manager, WRFR-LP (Portland Tr. 103-04); Testimony of Zoe Armstrong, WRFR-LP (Portland Tr. 104-06); Testimony of Liz Wright, Associate Professor of Communication, Rivier College, Co-Producer, Portsmouth Community Radio (Portland Tr. 154-55).

<sup>330</sup> Reply Comments of Tom Bik (Jan. 3, 2005) at 1-2.

<sup>331</sup> *See, e.g.*, Comments of Future of Music Coalition (Nov. 1, 2004) at 6; Comments of Nickolaus E. Leggett (July 29, 2004) at 1; Comments of Michigan Music Is World Class Campaign (Dec. 22, 2003); Reply Comments of Recording Artist Groups (Jan. 3, 2005) at 19-22.

<sup>332</sup> Comments of John B. Freeman, Jr. (Dec. 20, 2004) at 1.

<sup>333</sup> Testimony of Liz Humes, who read into the record a letter from former Richmond Mayor and Virginia Governor Doug Wilder praising the station for its efforts and characterizing locally-operated stations like it as “an ideal tool for communication between municipalities and the communities they serve.” (Washington, D.C. Tr. 64-65).

spectrum allocation procedures. These proposals include the following: elimination of the third adjacent channel protection, consistent with the Commission's recommendation to Congress in 2004;<sup>334</sup> establishment of a low power AM service;<sup>335</sup> grant of primary service status to LPFM over FM translators;<sup>336</sup> reform of the LPFM rules to allow a relaxed policy toward minor facility changes involving LPFM stations that have already been approved or are still being actively processed by the Commission;<sup>337</sup> modification of the translator rules to eliminate speculative filings;<sup>338</sup> the licensing of more LPFM stations;<sup>339</sup> encouraging the development of LPFM stations, particularly in more populated areas;<sup>340</sup> enhancement of the ability of low power television stations to transition to Class A stations;<sup>341</sup> and assignment of more broadcast licenses to nonprofit, independent media that serve the needs and interests of diverse social, economic, ethnic, and racial groups within local communities, including more licenses for low power broadcasting, and more spectrum availability for unlicensed community broadcasting.<sup>342</sup> However, other commenters state that LPFM facilities should not receive interference priority over that accorded to FM translators.<sup>343</sup> National Public Radio urges that, given the importance

<sup>334</sup> Comments of AFTRA (Nov. 1, 2004) at 27; Comments of Midwest Christian Media, Inc. (Nov. 1, 2004) at 1-2; Comments of National Religious Broadcasters (July 26, 2004) at 2-3; Comments of San Manuel Economic Development Foundation, Inc. (November 30, 2004) at 3; Testimony of John B. Freeman Jr., Chief Operating Officer, Southern Development Foundation, licensee of KOCZ-LP, Opelousas, Louisiana (San Antonio Tr. 121-23); Comments of REC Networks (Dec. 16, 2003) at 3-4; Comments of Edward A. Schober (Sept. 1, 2004) at 1; Testimony of Dennis Ross, Founder and President, WJZP-LP (Portland Tr. 80-82).

<sup>335</sup> Comments of Frederick M. Baumgartner and Nickolaus E. Leggett (Oct. 23, 2003) at 2-8; Comments of the Amherst Alliance (Mar. 15, 2004) at 7-8; Comments of Citizens Media Corps. and the Commonwealth Broadband Collaborative (Jan. 20, 2004) at 2-5; Comments of Lee W. Pratt (July 23, 2004) at 1-4; Comments of Daniel Brown (Dec. 31, 2003) at 3-4; Comments of Sam Brown (Nov. 1, 2004) at 7; Comments of William W. Tinsley III (Dec. 31, 2003) at 2-3; Comments of Frank Hansche (July 23, 2004) at 4; Comments of Nickolaus Leggett (July 29, 2004) at 1-2; Comments of Michigan Music is World Class Campaign (Dec. 22, 2003) at 4-5.

<sup>336</sup> Comments of Midwest Christian Media, Inc. (Nov. 1, 2004) at 4-6, Reply Comments of Prometheus Radio Project (Jan. 3, 2005) at 9 (provide preference to LPFMs that pledge to locally originate programming); Reply Comments of Gamecock Alumni Broadcasters, LLC (Dec. 27, 2004) at 1-2; Comments of William Tinsley (Dec. 31, 2003) at 2; Comments of Chuck Conrad, General Manager, KZQX-LP, San Antonio, Texas (San Antonio Tr. 215-16); Comments of Robert Hutchins (Sept. 21, 2005) at 1; Comments of Michigan Music is World Class Campaign (Dec. 22, 2003) at 4. *But see* Comments of Educational Media Foundation (Nov. 1, 2004) at 1-5; Comments of National Public Radio, Inc. (Nov. 1, 2004) at 25-30, NPR Reply Comments (Jan. 3, 2005) at 3-6 (opposing alteration of the respective status of LPFM and FM translator facilities, noting the importance of each service).

<sup>337</sup> Comments of Dr. Sandra Woodruff, Vice President – Technology, Grays Harbor Educational Media and Jennifer Diane Reitz, President, Sam-Sno Educational Media (Nov. 1, 2004) at 2.

<sup>338</sup> Comments of REC Networks (Nov. 1, 2004) at 8-12.

<sup>339</sup> Testimony of Jon Hinck (Portland Tr. 176); Comments of David Bracher (Aug. 9, 2004) at 4.

<sup>340</sup> Reply Comments of Recording Artists' Coalition at 23.

<sup>341</sup> Comments of Warren Trumbly, President, Community Broadcasters Association (Monterey Tr. 138); CBA Comments at 6-7.

<sup>342</sup> Comments of Brennan Center for Justice, Consumer Federation of America, *et al.* (Nov. 1, 2004) at 34-35.

<sup>343</sup> *See, e.g.,* Comments of Educational Media Foundation (Nov. 1, 2004) at 1 (noting that translator stations “form an integral and indispensable role” in the provision of service, in particular, “by serving rural areas as well as underserved, niche markets that are often overlooked by full power radio stations”).

of both LPFM and translator facilities to providing service to the public, the Commission should not alter its current regulations and the reasonable balance that it has achieved between the two services.<sup>344</sup> The National Federation of Community Broadcasters suggests that the Commission facilitate the development of LPFM by extending the construction periods for such stations.<sup>345</sup>

### 3. Issues for Commission Action

131. The record compiled in this docket establishes that many of the over 1,275 authorized LPFM stations offer substantial service specifically tailored to meet the specific needs and issues of their communities of license. Particularly in light of record of service, we agree with many commenters that expanding opportunities for LPFM stations would ensure that more local voices are available in communities. As noted *supra*, in response to the concerns raised in the LPFM proceeding and echoed by the record here, we recently adopted a number of measures raised in the *LPFM FNPRM* to help the LPFM service to thrive and remain local. In addition, we issued a *Second FNPRM* to advance our goal “to ensure that we maximize the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees.”<sup>346</sup> Beyond action in that proceeding, we also will seek to increase the number of LPFM stations that are on the air and providing service to the public, and to promote the continued operation of LPFM stations already broadcasting, while avoiding interference to existing FM service.

132. Specifically, by the *LPFM Third R&O*, we have taken a number of actions to help the LPFM service to thrive and to enhance localism.<sup>347</sup> First, the *LPFM Third R&O* adopted the proposal that sudden changes of more than 50 percent of the membership of governing boards would no longer cause a substantial change in ownership or control of a LPFM station.<sup>348</sup> This measure can assist in the viability of LPFM operations, since frequent elections and changes in governing board membership are common among the volunteer organizations and other similar entities to which LPFM stations are commonly licensed. We also took action on the *LPFM FNPRM* proposal to eliminate the existing rule prohibiting LPFM transfers and assignments and allow the sale of LPFM licenses, subject to certain limitations.<sup>349</sup> Allowing for the alienability of LPFM licenses, with some restrictions, will help ensure the longevity and success of the service, which in turn will promote localism.

133. In order to promote diverse and local ownership in the LPFM service, the *LPFM Third R&O* reinstated the original rule limiting ownership to one station per licensee and requiring that all authorization holders be local to the community of the station.<sup>350</sup> It also clarified the definition of local program origination, to state that repetitious automated

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<sup>344</sup> Comments of National Public Radio, Inc. (Nov. 1, 2004) at 25-30; *see also* Comments of William Yeager (Nov. 1, 2004) at 2.

<sup>345</sup> NFCB Reply Comments at 21.

<sup>346</sup> *LPFM FNPRM*, 20 FCC Rcd at 6763 ¶ 1.

<sup>347</sup> *See LPFM Third R&O*.

<sup>348</sup> *Id.* at ¶ 13.

<sup>349</sup> *Id.* at ¶¶ 15, 17.

<sup>350</sup> *Id.* at ¶¶ 23-24.

programming, and programs broadcast more than twice do not meet the local origination requirement.<sup>351</sup> Finally, we expanded the definition of local for rural communities. The existing rule, by which an LPFM applicant is deemed “local” if it is physically headquartered or has a campus within ten miles of the proposed LPFM transmitter site, or if 75 percent of its board members reside within ten miles of the proposed LPFM transmitter site, is extended to 20 miles for rural communities outside the top fifty urban markets, for both the distance from transmitter and residence of board member standards.<sup>352</sup> Furthermore, we took action to encourage voluntary time-sharing agreements between applicants for particular LPFM facilities that are tied under the comparative point system.<sup>353</sup>

134. The *LPFM Third R&O* also adopted changes to the LPFM technical rules. While the *LPFM NPRM* proposed to extend the current 18-month LPFM construction period to 36 months, we determined that a better course of action would be to maintain the 18 month construction period, and allow permittees the opportunity to seek an additional 18 months to complete construction of their facilities upon a showing of good cause.<sup>354</sup>

135. Regarding interference issues, the *LPFM Third R&O* deferred a decision on whether to modify the “co-equal” status between FM translator and LPFM stations.<sup>355</sup> Nevertheless, the Commission concluded that it should develop a more complete record on this issue, and issued the *LPFM SFNPRM* regarding this issue.<sup>356</sup> However, in order to further our twin goals of increasing the number of LPFM stations and promoting localism, we determined it was necessary to limit the preclusive impact of the 2003 FM translator application filing window, in which over 13,000 applications were filed. As such, the *LPFM Third R&O* imposes a 10-application cap with respect to the remaining 7,000 pending applications.<sup>357</sup> Implementation of the cap will result in the dismissal of approximately 4,500 applications but will affect fewer than 20 percent of all translator window filers.<sup>358</sup> Our imposition of a 10-application cap will limit the preclusive impact of Auction No. 83 filings on LPFM licensing opportunities by barring the processing of thousands of FM translator applications filed by a very small number of FM translator applicants.<sup>359</sup>

136. The *LPFM Third R&O* also adopted a proposal contained in the *LPFM FNPRM* to narrow the current rule which requires an LPFM station to cease operations if it cannot resolve interference complaints within the 70 dBμ contour of a subsequently authorized full power station.<sup>360</sup> The modified rule requires LPFM stations to resolve only co- and first-adjacent

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<sup>351</sup> *Id.* at ¶ 24.

<sup>352</sup> *Id.* at ¶ 25.

<sup>353</sup> *LPFM Third R&O* at ¶¶ 29, 33.

<sup>354</sup> *Id.* at ¶ 40.

<sup>355</sup> *Id.* at ¶ 49.

<sup>356</sup> *Id.*

<sup>357</sup> *Id.* at ¶ 56

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> *Id.* at ¶ 63.

channel interference complaints or cease operations.<sup>361</sup> The *LPFM Third R&O* also adopted an interim processing policy for the consideration of a second-adjacent channel short-spacing waiver sought in an LPFM displacement application to change channels.<sup>362</sup> An impacted full service station will be provided an opportunity to show cause why waiving the rules and granting the LPFM modification application is not in the public interest.<sup>363</sup> In considering the LPFM request, the Commission would balance the potential for new interference to the full service station against the potential displacement of the LPFM station.<sup>364</sup> If a waiver is warranted, the Media Bureau will issue a Special Temporary Authorization to the LPFM licensee.<sup>365</sup>

137. The *LPFM Third R&O* also establishes an interim processing policy for certain LPFM stations threatened with displacement. In circumstances in which there are no other technical options, the Commission will presumptively favor those LPFM stations that have regularly provided eight hours of locally originated programming daily over an encroaching full service station application.<sup>366</sup> The presumption is rebuttable, and the Commission will consider many factors in considering an LPFM station's request for a limited waiver of secondary status, including the Section 307(b) benefits of the city of license modification and the extent to which other NCE and LPFM stations provide locally originated programming in the LPFM station's service area.<sup>367</sup>

138. In the *LPFM SFNPRM*, we also renewed our recommendation that Congress eliminate the statutory provision requiring third adjacent channel protection by LPFM facilities.<sup>368</sup> As we reported to Congress in 2004, LPFM stations do not pose a significant risk of causing interference to existing full-service FM stations or FM translator and booster stations operating on third-adjacent channels.<sup>369</sup> If such interference were to occur, the Commission can address it on a case-by-case basis using the third-adjacent channel LPFM interference complaint and license modification procedures adopted in September 2000.<sup>370</sup> Eliminating this restriction, which must come with Congressional action, would be a significant step toward substantially increasing the number of LPFM stations potentially available for authorization.

139. The *LPFM SFNPRM* asks for comment on issues of interference in order to determine whether additional rule changes are warranted to enhance the LPFM service's long-term viability and advance the Commission's localism goals. First, it seeks comment on whether to modify the LPFM technical rules to codify the second-adjacent channel waiver and

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<sup>361</sup> *Id.*

<sup>362</sup> *Id.* at ¶ 65-66.

<sup>363</sup> *Id.* at ¶ 67.

<sup>364</sup> *Id.*

<sup>365</sup> *Id.* Any STA issued pursuant to this processing policy will be subject to any action taken by the Commission on the *LPFM SFNPRM*.

<sup>366</sup> *Id.* at ¶ 68-71.

<sup>367</sup> *Id.* at ¶ 69.

<sup>368</sup> *Id.* at ¶ 72.

<sup>369</sup> See *NOI*, 19 FCC Rcd at 12442 n.112.

<sup>370</sup> See 47 C.F.R. §§ 73.810, 73.827.



displacement policies adopted in the *LPFM Third R&O*, as discussed above.<sup>371</sup> It also tentatively concludes that, when implementation of a full service station facility proposal would impact an LPFM station, the full service station will be required to provide the LPFM station notice of its application filing, technical assistance in identifying alternative channels, and reimbursement for any resulting LPFM facility modifications.<sup>372</sup> The *LPFM SFNPRM* tentatively concludes that the LPFM technical rules should be modified to permit the licensing of LPFM stations by using a contour, as opposed to a distance separation, methodology in order to expand LPFM station licensing opportunities.<sup>373</sup> It also tentatively concludes that the Commission should retain as an alternate licensing scheme the current LPFM distance separation rule in the event that a contour rule is adopted.<sup>374</sup> Finally, the *LPFM SFNPRM* seeks additional comment on the issue whether the Commission should retain the current “co-equal” status between the LPFM and FM translator services.<sup>375</sup>

140. With regard to other services, we direct the Media Bureau’s Audio Division to develop a new computer program to assist potential radio applicants in identifying suitable available commercial FM spectrum in the location from which they desire to operate. Because the first step in obtaining a license for a new FM station is to add a new allotment to the FM Table of Allotments, to do so, a prospective applicant must determine an available community of license, frequency and the transmitter site geographic coordinates for its planned station. Once this has been done, the proponent must file a petition for rulemaking to add the allotment and an FCC Form 301 application for a construction permit for the proposed facility.<sup>376</sup> The new Allotment Channel Finder program, designed to help potential applicants identify available FM allotments throughout the nation, would be accessed on the Commission’s website. Our making such software available to the public free of charge will render the process of finding potential frequencies amid the congestion of the spectrum much easier. Because the program will make certain assumptions about the identification of the FM licensees, applicants, and rulemaking proponents whose facilities a new applicant must protect, before filing a petition and application for a new station, a party seeking to commence this process should retain the services of a consulting engineer to confirm the availability of the authorization sought. Nevertheless, by facilitating the identification of available frequencies by potential new broadcasters, the Commission will reduce the cost of performing a frequency search, which will likely lead to increased localism in broadcasting, as well as diversity in radio ownership and programming.

141. As a final matter, we understand the concerns of commenters that would like to upgrade LPTV stations to Class A status. We agree that this action would provide investment protection for low power TV stations looking to make investments in the DTV transition. Because the Class A rules require such stations to provide locally produced programming,

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<sup>371</sup> See *LPFM SFNPRM* ¶ 74.

<sup>372</sup> See *LPFM Third R&O* ¶¶ 76-77.

<sup>373</sup> *Id.* at ¶ 83.

<sup>374</sup> *Id.*

<sup>375</sup> *Id.* at ¶ 84.

<sup>376</sup> Information on this application process can be found on the Commission’s website, at <http://www.fcc.gov/mb/audio/howtoapply.html>.

increasing the number of Class A stations would ensure the existence of continued community programming.<sup>377</sup> We tentatively conclude that we should allow additional qualified LPTV stations to be granted Class A status. We seek comment on this tentative conclusion, as well as on how to define eligibility and our statutory authority to take this action.

#### IV. CONCLUSION

142. As we observed in the *NOI* in this proceeding, the concept of creating and maintaining a system of radio and television stations that offer programming responsive to the unique needs and issues facing the communities that they are licensed to serve is the centerpiece of the Commission's regulation of the broadcast industry. The fact that we have received over 83,000 comments and heard from hundreds of participants at the six field hearings that we have conducted throughout the country eloquently demonstrates the importance with which the public views the concept of localism: the obligation of stations to provide service vital to their communities. In particular, the often passionate testimony that we received from the "open microphone" participants at these hearings, generally private citizens who stayed until well into the night often and came a long way to make known their carefully crafted observations, underscores the significance to them of this issue.

143. We hope to move quickly to adopt the rule modifications that we propose in this Report. The Commission must do its part to educate and mobilize members of the public to become actively involved in ensuring, and assisting us in ensuring, that the stations licensed to serve them do so in the best possible manner. We urge members of the public to become actively involved in this process and to communicate with their local broadcasters as to how their stations can better do so. Only if this dialogue occurs can broadcasters translate those communicated needs into meaningful programming that can make a difference. It is our intention that the steps that we take in this Report and elsewhere will assist in that process.

#### V. ADMINISTRATIVE MATTERS

##### A. Initial Regulatory Flexibility Act Analysis

144. The Initial Regulatory Flexibility Analysis is attached to this document as Appendix B.

##### B. Initial Paperwork Reduction Act of 1995 Analysis

145. This document has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA"),<sup>378</sup> and contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in this Notice, as required by the PRA.

146. Written comments on the PRA proposed information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before **[60 DAYS AFTER DATE OF PUBLICATION IN THE**

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<sup>377</sup> See 47 U.S.C. § 336(f)(2).

<sup>378</sup> The Paperwork Reduction Act of 1995 ("PRA"), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of Title 44 U.S.C.).

**FEDERAL REGISTER]**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,<sup>379</sup> we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

147. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, S.W., Room 1-C823, Washington, D.C., 20554, or via the Internet to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov); and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via Internet to [Kristy\\_L.\\_LaLonde@omb.eop.gov](mailto:Kristy_L._LaLonde@omb.eop.gov), or via fax at 202-395-5167.

148. *Further Information.* For additional information concerning the PRA proposed information collection requirements contained in this document, contact Cathy Williams at 202-418-2918, or via the Internet to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

### C. Ex Parte Rules

149. *Permit-But-Disclose.* This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, if they are disclosed as provided in the Commission's rules.<sup>380</sup>

### D. Filing Requirements

150. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules,<sup>381</sup> interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System ("ECFS"), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.<sup>382</sup>

151. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable

<sup>379</sup> The Small Business Paperwork Relief Act of 2002 ("SBPRA"), Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of Title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

<sup>380</sup> See generally 47 C.F.R. §§ 1.1202, 1.1203, 1.1206(a).

<sup>381</sup> See *id.* §§ 1.415, 1.419.

<sup>382</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

152. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

153. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

154. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

155. *Additional Information.* For additional information on this proceeding, contact Jeremy Kissel, Media Bureau, at (202) 418-2896, or at [jeremy.kissel@fcc.gov](mailto:jeremy.kissel@fcc.gov).

## VI. ORDERING CLAUSES

156. Accordingly, IT IS ORDERED, pursuant to the authority found in Sections 4(i), 303, 612, and 616 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 532 and 536, this Report on Broadcast Localism and Notice of Proposed Rulemaking IS ADOPTED.

157. IT IS FURTHER ORDERED that pursuant to Sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 that NOTICE IS HEREBY GIVEN of the

proposals and tentative conclusions described in this Report on Broadcast Localism and Notice of Proposed Rulemaking.

158. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Report on Broadcast Localism and Notice of Proposed Rulemaking, including the Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary



## APPENDIX A

## Principal Comments Filed in MB Docket No. 04-233\*

Jesse Aguirre  
Akaku: Maui Community Television  
Alaska Broadcasters Association  
Margarita Allen  
Alliance for Community Media  
American Farm Bureau Federation  
American Federation of Television and Radio Artists & American Federation of Musicians  
The Amherst Alliance  
Arkansas Broadcasters Association  
Arizona, Kentucky and Montana Broadcasters Associations  
Gwen Arnold  
The Association of Public Television Stations  
BAS Broadcasting, Inc.  
Frederick M. Baumgartner and Nickolaus Leggett  
Belo Corporation  
Tom Bik  
Bonneville International Corporation  
Phil Bowler  
David Bracher  
Robert Branch, Jr.  
Brennan Center for Justice, Consumer Federation of America, *et al.*  
Betty Briggs  
Daniel Brown  
Sam Brown  
Buckley Radio  
California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.  
California Oregon Broadcasting, Inc.  
The Campaign Legal Center and The Alliance for Better Campaigns  
Capitol Broadcasting Company, Inc.  
Cascade Radio Group  
Chicago Access Corporation  
Reverend Robert P. Chrysafis  
Laurie Cirivello  
Citadel Broadcasting Company  
Citizens Media Corps and Commonwealth Broadband Collaborative  
Clear Channel Communications, Inc.  
Collegiate Broadcasters Inc.  
Russell Collins  
Columbus Radio Group  
The Community Broadcasters Association  
The Consumer Federation of America and Consumers Union  
Mark Conzemius

Corporation for Public Broadcasting  
Cox Radio Orlando  
Richard Crandall  
The Cromwell Group, Inc.  
William H. Cullin  
Val Curtis  
Drew Daniels  
Delmarva Broadcasting Company  
Desert Television, LLC  
Diablo Video Arts, Inc.  
Cathy M. Dillon  
The Donald McGannon Communication Research Center  
Terri Dourian  
EchoStar Satellite, LLC  
Educational Media Foundation  
Various Emmis Licensee Subsidiaries  
Various Entercom Licensee Subsidiaries  
Lida Lee Denney Erben  
James F. Evans  
Lincoln Farnum  
Fox Television Stations, Inc. and Fox Television Holdings, Inc.  
Franklin Communications, Inc.  
John B. Freeman, Jr.  
William R. Fritsch, Jr.  
The Future of Music Coalition  
Colin Gallagher  
Alice Gallio  
Gannett Broadcasting  
Robert M. Goldberg  
Linda Goslin  
Gray Television Group, WKBO-TV  
Julie Grisham  
Howard Gustafson  
Patricia Hackney  
Kirby and Kathy Haertner  
Frank Hansche  
Douglas Hartner  
Rachel Hern  
Inez B. Hinchcliff  
Marilyn Hinton  
Lucinda Hormel  
Christina Hughes  
Bonnie Hutcheon  
Illini Media Company  
Illinois Farm Bureau  
Independence Television Company

Infinity Broadcasting Corporation  
Jackson Radio Works, Inc.  
Jewish Family and Children's Service  
Joint Broadcasters  
Julie Jones  
Philip M. and Dorothy Jones  
Various Journal Broadcast Group Licensee Subsidiaries  
Junior Achievement of South Dakota, Inc.  
KAAR-FM, KMBR-FM and KXTL-AM  
Mike Kanalakakis  
Judy Karas  
KBZS-FM, KWFS-FM, and KNIN-FM  
KIMT-TV  
KISS-FM  
KIVI-TV  
KLEW-TV  
KLKN-TV  
Jeannette Knapp  
KOLN-TV/KGIN-TV  
KRNV-TV  
KTNV-TV  
KTRE-TV  
KTVL-TV  
KVOO, KXBL and KFAQ  
KXLO/KLCM Radio  
KZLA-FM  
Lakefront Communications  
Ted Langell  
James D. Leach  
League of Woman Voters  
Clayton Leander  
Nickolaus Leggett  
Livingston Radio Company  
Mary Lodes  
Daniel Lopez  
Low Power AM Team  
Max Media of Montana LLC  
Media General/WJTV  
Media General Broadcasting of South Carolina Holdings, Inc.  
Meyer Communications, Inc.  
Michigan Music Is World Class! Campaign  
Midwest Christian Media, Inc.  
Various Midwest Communications licensee subsidiaries  
Mission Broadcasting, Inc.  
The Mississippi Association of Broadcasters  
Monterey Peninsula Chamber of Commerce

Roseanne Morton  
Mt. Hood Cable Regulatory Commission  
National Academy of Recording Arts and Sciences, Inc.  
National Association of Broadcasters  
Named State Broadcasters Associations  
National Public Radio, Inc.  
Nebraska Farm Bureau Federation  
The New Mexico Broadcasters Association  
Michael R. Newell  
NewRadio Group  
Newton Communications Access Center  
Nexstar Broadcasting, Inc.  
Norman Broadcasting Company, Inc.  
North Carolina Association of Broadcasters  
North Dakota Farm Bureau  
Northwestern College and Radio  
NY/PA Media Action/Binghamton Independent Media Center  
Ohio Farm Bureau Federation  
Jeff Ogden  
Ronda Orchard  
Susie Pajak  
Amy Parenti  
Bob Parker  
Robert Peckman  
Grant E. Peterson  
Poor Magazine  
Andrew Potter  
Lee Pratt  
Anna Price  
Mrs. Andrew Price  
Prometheus Radio Project  
The Radio-Television News Directors Association  
Rancho Palos Verdes Broadcasters, Inc.  
Louise Rauch  
Nexstar Broadcasting, Inc.  
Recording Industry Association of America, Inc.  
REC Networks  
Naomi Rhodes  
Grace R. Rips  
Lois Robin  
Jack E. Rooney  
Salinas Valley Chamber of Commerce  
San Antonio AIDS Foundation  
San Manuel Economic Development Foundation, Inc.  
Sarkes Tarzian, Inc.  
Don Schellhardt, Esq., Schellhardt Advocacy Services

Edward Schober  
Arthur Schwartz  
Lucille Seidenberger  
Service Employees International Union  
Sinclair Broadcast Group, Inc.  
Thomas C. Smith  
Wolf Snider  
Southeastern Media/WFXG  
Jean Stiles  
Summit Media Broadcasting  
Sunbelt Communications Company  
David Sywak  
Deborah Taggart  
Mary Tedder  
Texas Association of Broadcasters  
Kathryn Thomas  
Three Eagles Communications, Inc.  
William W. Tinsley III  
TK Associates International  
Trinity Christian Center of Santa Ana, Inc.  
Sherry Tschirhart  
Roy Turner  
Univision Communications, Inc.  
United States Conference of Catholic Bishops  
United Way of Santa Cruz County  
USC Annenberg School for Communication  
USS Lexington, Museum on the Bay  
Cuauhtemoc Valencia  
John P. Valentine  
VCY America, Inc.  
Viacom Inc.  
Emily Viglielmo  
Virden Broadcasting Corporation, Kaskaskia Broadcasting, Inc., and Miller Communications, Inc.  
WAITT Radio – Omaha  
The Walt Disney Company  
WAGT  
WALA-TV  
Jennifer Walford  
Brian Wallace  
Washington State Broadcasters Association  
WAVE-TV  
WAVY-TV  
WBHK Radio  
WBKO  
WBNG-TV



WBNX-TV  
WBRZ  
WBTS  
WCDB  
WDSI  
R.E. Wendell  
WFMS  
WGLD  
WHBF-TV  
WHTM-TV  
WHVO-AM  
W. Wilson  
WISC-TV  
WISG  
WISH-TV  
WKBT  
WKDZ-FM/AM  
WKRQ-TV  
WLBT  
WMOJ-FM  
WOI-TV  
Arnold Wolf  
Sandra Woodruff  
Mark Wooldridge  
Darby Moss Worth  
WOSU Stations  
WQOM-TV  
WRRM-FM  
WSB  
WSET  
WSJV  
WSLS/Newschannel 10  
WSYM-TV  
WTHI-TV  
WTKM\_FM  
WTMJ/WKTI Radio  
WUCZ-FM  
WVBT-TV  
WWCD  
WWST, WMYU, WKHT, WQBB  
WWVR-FM  
WXOW-TV  
WYFF-TV  
WYGY-TV  
Julie Ybarra  
William Yeager

Louis A. Zaroni

**PRINCIPAL REPLY COMMENTS FILED IN MB DOCKET NO. 04-233\***

American Federation of Musicians, American Federation of Television and Radio Artists  
Future of Music Coalition, The Recording Academy, and Recording Artists Coalition  
The Arizona Broadcasters Association  
Barnstable Broadcasting, Inc.  
Belo Corporation  
Campaign Legal Center and Alliance for Better Campaigns  
Sam Brown  
Chicago Access Corporation  
Clear Channel Communications, Inc.  
Cox Broadcasting, Inc.  
David R. Fertig  
Gamecock Alumni Broadcasters, LLC  
Andrew George  
Greater Media Boston  
Greater Media, Inc.  
Greater Media New Jersey  
Greater Media Philadelphia  
Illini Media Company  
Kentucky Broadcasters Association  
Senator Frank R. Lautenberg  
Rick London  
Mercer Island School District #400  
The Montana Broadcasters Association  
Geno Munari  
National Association of Broadcasters  
National Federation of Community Broadcasters  
National Public Radio, Inc.  
NY/PA Media Action and Binghamton Independent Media Center  
The Post Company  
The Prometheus Radio Project  
REC Networks  
The Recording Artist Groups  
J. Zach Schiller  
Sinclair Broadcast Group, Inc.  
Televiscentro of Puerto Rico, LLC  
Univision Communications, Inc.

\*The Commission has also received thousands of additional comments and reply comments from concerned parties in this proceeding, some by e-mail and others submitted after the respective comment and reply comment filing deadlines. All such filings are available through the Commission's electronic comment filing system.

## APPENDIX B

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act, as amended (“RFA”),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (“IRFA”) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the attached Report on Broadcast Localism and Notice of Proposed Rule Making (“*Notice*”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice* as indicated on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (“SBA”).<sup>2</sup> In addition, the *Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### A. Need for, and Objectives of, the Proposed Rules

2. In August 2003, the Commission launched a Localism in Broadcasting initiative designed to review, and possibly enhance, localism practices among broadcasters which are designed to ensure that each station treats the significant needs and issues of the community that it is licensed to serve with the programming that it offers. The Commission subsequently issued a *Notice of Inquiry* (“*NOI*”) concerning localism.<sup>4</sup> Through the *NOI*, the Commission sought direct input from the public on how broadcasters are serving the interests and needs of their communities; whether the agency needs to adopt new policies, practices, or rules designed directly to promote localism in broadcast television and radio; and, if so, what those policies, practices, or rules should be. The *Notice* invites comment on several proposals designed to enhance broadcast localism and diversity, including increasing and improving the amount and nature of broadcast programming that is targeted to the local needs and interests of a licensee’s community of service, and providing more accessible information to the public about broadcasters’ efforts to air such programming.

3. The record in the proceeding demonstrates that some broadcasters devote significant amounts of time and resources to airing programming that is responsive to the needs and interests of broadcasters’ communities of license, while many other commenters raised serious concerns that broadcasters’ efforts, as a general matter, fall far short from what they should be. In the *Notice*, the Commission details several proposals that will promote both localism and diversity in broadcasting, and seeks comment on same.

#### B. Legal Basis

4. This *Notice* is adopted pursuant to Sections 4(i), 303, 612, and 616 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303, 532 and 536.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 ¶ 1 (2004).

### C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>5</sup> The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental entity” under Section 3 of the Small Business Act.<sup>6</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>7</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>8</sup>

6. **Television Broadcasting.** In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than \$13 million in annual receipts as a small business. Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”<sup>9</sup> According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of February 5, 2007, 872 (about 70 percent) of the 1,260 commercial television stations in the United States have revenues of \$13 million or less. However, in assessing whether a business entity qualifies as small under the above definition, business control affiliations<sup>10</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the attribution rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

7. An element of the definition of “small business” is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this

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<sup>5</sup> 5 U.S.C. § 603(b)(3).

<sup>6</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies, “unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of the term where appropriate to the activities of the agency and publishes the definition(s) in the Federal Register.”

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. § 632.

<sup>9</sup> OMB, North American Industry Classification System: United States, 1997, at 508-09 (1997) (NAICS Code 51320 which was changed to 51520 in October 2002). This category description continues, “These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in produced programming. *See id.* at 502-505, NAICS code 512110. Motion Picture and Video Production; Code 512120, Motion Picture and Video Distribution, code 512191, 19 FCC Rcd 15238 (2004). Teleproduction and Other Post-Production Services, and code 512199, Other Motion Picture and Video Industries.

<sup>10</sup> “[Business concerns] are affiliates of each other when one business concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).



basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

8. **Radio Broadcasting.** The Small Business Administration defines a radio broadcasting entity that has \$6.5 million or less in annual receipts as a small business.<sup>11</sup> Business concerns included in this industry are those “primarily engaged in broadcasting aural programs by radio to the public.”<sup>12</sup> According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of February 5, 2007, 10,442 (about 95 percent) of 10,962 commercial radio stations in the United States have revenues of \$6.5 million or less. We note, however, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations<sup>13</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

9. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities, and our estimates of small businesses to which they apply may be over-inclusive to this extent.

10. **FM Translator Stations and Low Power FM Stations.** The proposed rules and policies could affect licensees of FM translator and booster stations and low power FM (LPFM) stations, as well as to potential licensees in these radio services. The same SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than \$6.5 million in annual receipts.<sup>14</sup> Currently, there are approximately 4131 licensed FM translator and booster stations and 771 licensed LPFM stations.<sup>15</sup> Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition.

11. **Cable Television Distribution Services.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in

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<sup>11</sup> See NAICS Code 515112.

<sup>12</sup> *Id.*

<sup>13</sup> “[Business concerns] are affiliates of each other when one business concern controls or has the power to control the other or a third party or parties controls or has the power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>14</sup> See 13 C.F.R. § 121.201, NAICS Code 515112.

<sup>15</sup> See *News Release*, “Broadcast Station Totals as of December 31, 2006” (rel. Jan. 26, 2007) ([http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-269784A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-269784A1.doc)).

operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”<sup>16</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.<sup>17</sup>

According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.<sup>18</sup> Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.<sup>19</sup> Thus, the majority of these firms can be considered small.

**12. Cable Companies and Systems.** The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.<sup>20</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>21</sup> In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>22</sup> Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000-19,999 subscribers.<sup>23</sup> Thus, under this second size standard, most cable systems are small.

**13. Cable System Operators.** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>24</sup> The Commission has determined that an operator serving

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<sup>16</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition); <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>17</sup> 13 C.F.R. § 121.201, NAICS code 517110.

<sup>18</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

<sup>19</sup> *Id.* An additional 61 firms had annual receipts of \$25 million or more.

<sup>20</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

<sup>21</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

<sup>22</sup> 47 C.F.R. § 76.901(c).

<sup>23</sup> Warren Communications News, *Television & Cable Factbook 2006*, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

<sup>24</sup> 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>25</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.<sup>26</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,<sup>27</sup> and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

14. **Open Video Services.** Open Video Service (“OVS”) systems provide subscription services.<sup>28</sup> The SBA has created a small business size standard for Cable and Other Program Distribution.<sup>29</sup> This standard provides that a small entity is one with \$13.5 million or less in annual receipts. The Commission has certified a large number of OVS operators, and some of these are currently providing service.<sup>30</sup> Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that it does not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS. Given this fact, the Commission concludes that those entities might qualify as small businesses, and therefore may be affected by the rules and policies adopted herein.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

15. The *Notice* proposes a number of rule changes that, if adopted and implemented, may affect reporting, recordkeeping, and other compliance requirements on small entities. As noted above, we invite small entities to comment in response to the rules proposed in the *Notice*. Each of the proposals is described below.

16. The *Notice* seeks comment on whether the existing rules governing so-called “pre-filing and post-filing announcements” that licensees must air in connection with their license renewal applications should be changed. Specifically, the Commission seeks comment on whether the same information that is currently required for on-air announcements about soon-to-be-filed and pending renewal applications should be posted on a licensee’s website during the relevant months (*i.e.*, the posting begins on the sixth month before the license is due to expire and remains in place until after the deadline for filing petitions to deny). The *Notice* also seeks

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<sup>25</sup> 47 C.F.R. § 76.901(f); see Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

<sup>26</sup> These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

<sup>27</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission’s rules. See 47 C.F.R. § 76.909(b).

<sup>28</sup> See 47 U.S.C. § 573.

<sup>29</sup> 13 C.F.R. § 12.1201, NAICS code 517510.

<sup>30</sup> See <http://www.fcc.gov/mb/ovs/csovsarc.html> and <http://www.fcc.gov/mb/ovs/csovsr.html> (each visited in December 2007).

comment on whether to broaden the required language for these announcements contained in 47 C.F.R. § 73.3680(d)(4)(i), which currently provides the Commission's mailing address as a source for information concerning the broadcast license renewal process, to include the agency's website address and, where technically feasible, to provide a link directly to the agency's website.

17. The *Notice* invites comment on the Commission's tentative conclusion that licensees should convene and periodically consult with permanent community advisory boards made up of officials and other leaders from the community of each broadcast station for the purpose of determining significant community needs and issues, and whether the Commission should adopt similar rules or guidelines to foster licensees' communication with members of their stations' communities. It also seeks comment on whether television licensees should be required to maintain a physical presence at each television broadcasting facility during all hours of station operation. The *Notice* further seeks comment on the Commission's tentative conclusion that it should adopt specific procedural guidelines for the processing of license renewal applications for stations based upon their localism programming performance during the preceding license term. The *Notice* also seeks comment on whether a licensee should be required to situate its station main studio within the station's community of license to encourage production of locally originated programming, and whether accessibility of the main studio increases interaction between the licensee and its station's community of service.

18. The *Notice* also seeks comment on whether it could be useful for licensees of stations affiliated with networks, in fulfilling their localism obligations, to be able to review network programming at some point sufficiently in advance of airtime and whether existing affiliation agreements address such matters. It also seeks comment on the prevalence of voice-tracking, and whether the Commission can and should take steps to limit the practice, require disclosure, or otherwise address it. The *Notice* also seeks comment on whether the Commission should require licensees to provide the agency with data regarding their airing of the music and other performances of local artists and how they compile their stations' playlists. It also seeks comment on the appropriate form of such disclosures and in what manner, if any, the local nature of a station's music programming should be considered in any renewal application processing guidelines. Finally, the *Notice* seeks comment on the Commission's tentative conclusion that it should allow additional qualified LPTV stations to be granted Class A status, as well as on how to define eligibility and the Commission's statutory authority to take such action.

#### **E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

19. The RFA requires an agency to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>31</sup>

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<sup>31</sup> 5 U.S.C. § 603(c).

20. As noted, we are directed under law to describe any such alternatives we consider, including alternatives not explicitly listed above.<sup>32</sup> The *Notice* describes and seeks comment on several possible ways to enhance broadcast localism and diversity, including increasing and improving the amount and nature of broadcast programming that is targeted to the local needs and interests of a licensee's community of service, and providing more accessible information to the public about broadcasters' efforts to air such programming. The *Notice* seeks comment on how the proposals described herein will achieve that goal, and commenters are invited to propose steps that the Commission may take to minimize any significant economic impact on small entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules**

None.

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

Re: *Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking.*

Establishing and maintaining a system of local broadcasting that is responsive to the unique interests and needs of individual communities is an extremely important policy goal for the Commission. Indeed, a strong commitment to serving their local communities is at the heart of broadcasters' requirement to serve the public interest.

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<sup>32</sup> 5 U.S.C. § 603(b).



Moreover, along with competition and diversity, localism is one of the three goals underlying all of our media ownership rules. In the context of our media ownership review, I was asked by my colleagues and members of Congress to revive the localism proceeding initiated and stopped under the previous Chairman several years ago. I agreed doing so would be an important and responsible step for the Commission to take.

First, I completed the remaining two hearings the previous Chairman committed to holding back in 2003. The Commission devoted more than \$160,000 to hear from expert witnesses and members of the public on broadcasters' service to their local communities. We also spent approximately \$350,000 to gather data on localism much of which was used in the studies conducted on media ownership. In addition, the Commission paid Professor Simon Anderson of the University of Virginia to produce an academic paper on "Localism and Welfare", which was made available on our website last December.

Last month, the Commission took an important step in promoting localism when we adopted an order requiring television broadcasters to better inform their communities about how the programming they air serves them. Specifically, television stations will file a standardized form on a quarterly basis that details the type of programming that they air and the manner in which they do it. This form will describe a host of programming information including the local civic affairs, local electoral affairs, public service announcements (whether sponsored or aired for free) and independently produced programming. With a standardized form and public Internet access to it, the public and government officials will now be able to engage directly in a discussion about exactly what local commitments broadcasters are and/or should be fulfilling.

Today we take the next important step of adopting a Report summarizing the record in this proceeding and an NPRM that includes specific recommendations as to what broadcasters should be, and most frequently are, doing to serve the interests and needs of their local communities. The changes we propose are intended to promote localism by providing viewers and listeners greater access to locally responsive programming including, but not limited to, local news and other civic affairs programming. Most importantly, we tentatively conclude that *all* broadcasters must air a certain amount of local programming. I believe such a requirement is at the heart of what it means to be a local broadcaster.

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS  
CONCUR IN PART, DISSENT IN PART**

*Re: Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking.*

Today's decision would make George Orwell proud. We claim to be giving the news industry a shot in the arm—but the real effect is to reduce total newsgathering. We shed crocodile tears for the financial plight of newspapers—yet the truth is that newspaper profits are about double the S&P 500 average. We pat ourselves on the back for holding six field hearings across the United States—yet today's decision turns a deaf ear to the thousands of Americans who waited in long lines for an open mike to testify before us. We say we have closed loopholes—yet we have introduced new ones. We say we are guided by public comment—yet the majority's decision is overwhelmingly opposed by the public as demonstrated in our record and in public opinion surveys. We claim the mantle of scientific research—even as the experts say we've asked the wrong questions, used the wrong data, and reached the wrong conclusions.

I am not the only one disturbed by this illogical scenario. Congress and the American people have done everything but march down to Southwest DC and physically shake some sense into us. Everywhere we go, the questions are the same: Why are we rushing to encourage more media merger frenzy when we haven't addressed the demonstrated harms caused by previous media merger frenzy? Women and minorities own low single-digit percentages of America's broadcast outlets and big consolidated media continues to slam the door in their faces. It's going to take some major policy changes and a coordinated strategy to fix that. Don't look for that from this Commission.

Instead we are told to be content with baby steps to help women and minorities—but the fine print shows that the real beneficiaries will be small businesses owned by white men. So even as it becomes abundantly clear that the real cause of the disenfranchisement of women and minorities is media consolidation, we give the green light to a new round of—yes, you guessed it—media consolidation.

Local news, local music and local groups so often get shunted aside when big media comes to town. Commissioner Adelstein and I have heard the plaintive voices of thousands of citizens all across this land in dozens of town meetings and public forums. From newscasters fired by chain owners with corporate headquarters thousands of miles away to local musicians and artists denied airtime because of big media's homogenization of our music and our culture. From minorities reeling from the way big media ignores their issues and caricatures them as people to women saying the only way to redress their grievances is to give them a shot to compete for use of the people's airwaves. From public interest advocates fighting valiantly for a return of localism and diversity to small, independent broadcasters who fight an uphill battle to preserve their independence. It will require tough rules of the road to redress our localism and diversity gaps. Do you see any such rules being passed today? To the idea that license holders should give the American people high quality programming in return for free use of the public airwaves, the majority answers that we need more study of problems that have been documented and studied to death for a decade and more. Today's outcome is the same old same old: one more time, we're running the fast-break for our big media friends and the four corner stall for the public interest.

It is time for the American people to understand the game that's being played here. Big media doesn't want to tell the full story, of course, but I have heard first-hand from editorial page editors who have told me they can cover any story, save one—media consolidation, and that they have been instructed to stay away from that one. But that's another story.

Today's story is a majority decision unconnected to good policy and not even incidentally concerned with encouraging media to make our democracy stronger. We are not concerned with gathering valid data, conducting good research, or following the facts where they lead us.

Our motivations are less Olympian and our methodology far simpler—we generously ask big media to sit on Santa's knee, tell us what it wants for Christmas, and then push through whatever of these wishes are politically and practically feasible. No test to see if anyone's been naughty or nice. Just another big, shiny present for the favored few who already hold an FCC license—and a lump of coal for the rest of us. Happy holidays!

If you need convincing of just how non-expertly this expert agency has been acting lately, you couldn't have a better example than the formulation of the cross-ownership rule that the majority is adopting today. I know it's a little detailed to see how the sausage is made, but it's worth a listen.

On November 2, 2007—with just a week's notice—the FCC announced that it would hold its final media ownership hearing in Seattle. Despite the minimal warning, 1,100 citizens turned out to give intelligent and impassioned testimony on how they believed the agency should write its media ownership rules. Little did they know that the fix was already in, and that the now infamous *New York Times* op-ed was in the works announcing a highly-detailed cross-ownership proposal.

Put bluntly, those Commissioners and staff who flew out to Seattle with staff, the sixteen witnesses, the Governor, the State Attorney General and all the other public officials who came, plus the 1,100 Seattle residents who had chosen to spend their Friday night waiting in line to testify were, as Rep. Jay Inslee put it, treated like “chumps.” Their comments were not going to be part of the agency's formulation of a draft rule—it was just for show, to claim that the public had been given a chance to participate. The agency had treated the public like children allowed to visit the cockpit of an airliner—not actually allowed to fly the plane, of course, but permitted for a brief, false moment to imagine that they were.

The *New York Times* op-ed appeared on November 13, the next business day after the Seattle hearing. That same day, a unilateral public notice was issued, providing just 28 days for people to comment on the specific proposal, with no opportunity for replies. The agency received over 300 comments from scholars, concerned citizens, public interest advocates, and industry associations—the overwhelming majority of which condemned the Chairman's plan. But little did these commenters know that on November 28, two weeks *before* their comments were even due, the draft Order on newspaper-broadcast cross ownership had already been circulated. Once again, public commenters were treated as unwitting and unwilling participants in a Kabuki theater.

Then, last night at 9:44 pm—just a little more than twelve hours before the vote was scheduled to be held and long after the Sunshine period had begun—a significantly revised version of the Order was circulated. Among other changes, the item now granted all sorts of permanent new waivers and provided a significantly-altered new justification for the 20-market limit. But the revised draft mysteriously deleted the existing discussion of the “four factors” to be considered by the FCC in examining whether a proposed combination was in the public

interest. In its place, the new draft simply contained the cryptic words “[Revised discussion to come].” Although my colleagues and I were not apprised of the revisions, *USA Today* fared better because it apparently got an interview that enabled it to present the Chairman’s latest thinking. Maybe we really are the Federal Newspaper Commission.

At 1:57 this morning, we received a new version of the proposed test for allowing more newspaper-broadcast combinations. I can’t say that I fully appreciate the test’s finer points given the lateness of the hour and the fact that there was no time afforded to parse the finer points of the new rule. But this much is clear: the new version keeps the old loopholes and includes two new one pathways to cross ownership approval. So please don’t buy the line that the rule we adopt today involves fewer loopholes—it adds new ones. Finally, this morning at 11:12 a.m. as I was walking out my office door to come to this meeting, we received an e-mail containing additional changes. The gist of one of these seems to be that the Commission need not consider all of the “four factors” in all circumstances.

This is not the way to do rational, fact-based, and public interest-minded policy making. It’s actually a great illustration of why administrative agencies are required to operate under the constraints of administrative process—and the problems that occur when they ignore that duty. At the end of the day, process matters. Public comment matters. Taking the time to do things right matters. A rule reached through a slipshod process, and capped by a mad rush to the finish line, will—purely on the merits—simply not pass the red face test. Not with Congress. Not with the courts. Not with the American people.

It’s worth stepping back for a moment from all the detail here to look at the fundamental rationale behind today’s terrible decision. Newspapers need all the help they can get, we are told. A merger with a broadcast station in the same city will give them access to a revenue stream that will let them better fulfill their newsgathering mission. At the same time, we are also assured, our rules will require “independent news judgment” (at least among consolidators outside the top 20 markets). In other words, we can have our cake and eat it too—the economic benefits of consolidation without the reduction of voices that one would ordinarily expect when two news entities combine.

But how on earth can this be? To begin with, to the extent that the two merged entities remain truly “independent,” then there won’t be the cost savings that were supposed to justify the merger in the first place. On the other hand, if independence merely means maintaining two organizational charts for the same newsroom, then we won’t have any more reporters on the ground keeping an eye on government. Either way, we can’t have our cake and eat it, too.

Also, since when do unprofitable businesses support themselves by merging with profitable ones—and then sink *more* resources into the money-losing division simply as a public service? Think about it this way. If any of us were employed by a struggling company, and we suddenly learned that a Wall Street financier had obtained control, would we (1) clap our hands with joy because we expect the new owner is going to throw a bunch of cash our way and tell us to keep on doing what we’d been doing, except more lavishly or (2) start to fear for our jobs and brace for a steady diet of cost cutting?

Here’s my prediction on how it will really work. Mergers will be approved in both the top 20 and non-top-20 markets—towns big and small—because the set of exceptions we

announce today have all the firmness of a bowl of Jell-O. Regardless of our supposed commitment to “independent news judgment” the two entities’ newsrooms will be almost completely combined, with round after round of job cuts in order to cut costs. It’s interesting to hear the few proponents of this rule bemoan the lost jobs that they say result from failing newspapers. Ask them this: in this era of consolidation in so many industries, isn’t cutting jobs about the first thing a merged entity almost always does so it can show Wall Street it is really serious about cutting costs and polishing up the next quarterly report? These job losses are the **result** of consolidation. And more consolidation will mean more lost jobs. Newly-merged entities will attempt to increase their profit margins by raising advertising rates and relentless cost-cutting. Herein is the **real** economic justification for media consolidation within a single market.

The news isn’t so good for other businesses in the consolidated market, either. Think about the other broadcast stations there. It’s just like Wal-Mart coming to town—the existing news providers look around at the new reality and figure out pretty fast that they ought to head for the exit when it comes to producing news. Now, it may not be as stark as actually cancelling the evening news—it could just mean doing more sports or more weather or more ads during that half hour. But at the end of the day, the combined entity is going to have a huge advantage in producing news—and the other stations will make a reasonable calculation to substantially reduce their investment in the business. This is why, by the way, experts have been able to demonstrate—*in the record before the FCC, using the FCC’s own data*—that cross ownership leads to **less** total newsgathering in a local market. And that has large and devastating effects on the diversity and vitality of our civic dialogue.

Let’s also be careful not get too carried away with the supposed premise for all this contortionism, namely the poor state of local newspapers. The death of the traditional news business is often greatly exaggerated. The truth remains that the profit margins for the newspaper industry last year averaged around 17.8%; the figure is even higher for broadcast stations. As the head of the Newspaper Association of America put it in a Letter to the Editor of the *Washington Post* on July 2 of this year: “The reality is that newspaper companies remain solidly profitable and significant generators of free cash flow.” And as Member after Member Congress has reminded us, our job is not to ensure that newspapers are profitable—which they mostly are. Our job is to protect the principles of localism, diversity and competition in our media.

Were newspapers momentarily discombobulated by the rise of the Internet? Probably so. Are they moving now to turn threat into opportunity? Yes, and with signs of success. Far from newspapers being gobbled up by the Internet, we ought to be far more concerned with the threat of big media joining forces with big broadband providers to take the wonderful Internet we know down the same road of consolidation and control by the few that has already inflicted such heavy damage on our traditional media.

In the final analysis, the real winners today are businesses that are in many cases quite healthy, and the real losers are going to be all of us who depend on the news media to learn what’s happening in our communities and to keep an eye on local government. Despite all the talk you may hear today about the threat to newspapers from the Internet and new technologies, today’s *Order* actually deals with something quite old-fashioned. Powerful companies are using political muscle to sneak through rule changes that let them profit at the expense of the public



interest. They are seeking to improve their economic prospects by capturing a larger percentage of the news business in communities all across the United States.

Let's get beyond the weeds of corporate jockeying and inking up our rubber stamps for a new round of media consolidation to look for a moment at what we are *not* doing today. That's the real story, I think—that the important issues of minority and female ownership and broadcast localism and how they are being short-changed by today's rush to judgment.

### Minority and Female Ownership

Racial and ethnic minorities make up 33 percent of our population. They own a scant 3 percent of all full-power commercial TV stations. And that number is plummeting. Free Press recently released a study showing that during just the past year the number of minority-owned full-power commercial television stations declined by 8.5%, and the number of African American-owned stations decreased *by nearly 60%*. It is almost inconceivable that this shameful state of affairs could be getting worse; yet here we are.

In most places there is something approaching unanimity that this has to change. Broadcasters, citizens, Members of Congress, and every leading civil rights organization agree that the status quo is not acceptable. Each of my colleagues has recognized, I believe, that paltry levels of minority and female ownership are a reality—which makes today's decision all the more disappointing. There was a real opportunity to do something meaningful today after years of neglect, and we blew it.

It didn't have to be this way. I proposed both a process and a solution. We should have started by getting an accurate count of minority and female ownership—the one that the Congressional Research Service and the Government Accountability Office both just found that we didn't have. The fact that we don't even know how many minority and female owners there are is indicative of how low this issue is on the FCC's list of priorities. We also should have convened an independent panel proposed by Commissioner Adelstein, and endorsed by many, that would have reviewed all of the proposals before us, prioritized them, and made recommendations for implementation. We could have completed this process in ninety days or less and then would have been ready to act.

Today's item ignores the pleas of the minority community to adopt a definition of "Eligible Entity" that could actually help their plight. Instead, the majority directs their policies at general "small businesses"—a decision that groups like Rainbow/Push and the National Association of Black Owned Broadcasters assert will do little or nothing for minority owners. Similarly, MMTC and the Diversity and Competition Supporters conclude that they would rather have no package at all than one that includes this definition. Lack of a viable definition poisons the headwaters. Should we wonder why the fish are dying downstream?

So while I can certainly support the few positive changes in this item that do not depend on the definitional issue—such as the adoption of a clear non-discrimination rule—these are overshadowed by the truly wasted opportunity to give potential minority and female owners a seat at the table they have been waiting for and have deserved for far too long. My fear now is that with cross ownership done, the attentions of this Commission will turn elsewhere.

## Localism

At the same time that we have shamefully ignored the need to encourage media ownership by women and minorities, we have also witnessed a dramatic deterioration of the public interest performance of all our licensees. We have witnessed the number of statehouse and city hall reporters declining decade after decade, despite an explosion in state and local lobbying. The number of channels have indeed multiplied, but there is far less local programming and reporting being produced.

Are you interested in learning about local politics from the evening news? About 8 percent of such broadcasts contain any local political coverage at all, including races for the House of Representatives, and that was during the 30 days before the last presidential election. Interested in how TV reinforces stereotypes? Consider that the local news is four times more likely to show a mug shot during a crime story if the suspect is black rather than white.

The loss of localism impacts our music and entertainment, too. Just this morning, I had an e-mail from a musician who took a trip of several hundred miles and heard the same songs played on the car radio everywhere he traveled. Local artists, independent creative artists and small businesses are paying a frightful price in lost opportunity. Big consolidated media dampens local and regional creativity, and that begins to mess around pretty seriously with the genius of our nation.

All this is a travesty. We allow the nation's broadcasters to use half a trillion dollars of spectrum—for free. In return, we require that they serve the public interest: devoting at least some airtime for worthy programs that inform viewers, support local arts and culture, and educate our children—in other words, that aspire to something beyond just minimizing costs and maximizing revenue.

Once upon a time, the FCC actually enforced this bargain by requiring a thorough review of a licensee's performance every three years before renewing the license. But during decades of market absolutism, we pared that down to “postcard renewal,” a rubber stamp every eight years with no substantive review.

To begin with, the FCC needs to reinvigorate the license-renewal process. We need to look at a station's record every three or four years. I am disappointed that the majority so cavalierly dismisses this idea. And we should be actually **looking** at this record. Did the station show original programs on local civic affairs? Did it broadcast political conventions? In an era where too many owners live thousands of miles away from the communities they allegedly serve, do these owners meet regularly with local leaders and the public to receive feedback? Why don't we make sure that's done **before** we allow more consolidation?

In 2004, the Commission opened up a Notice of Inquiry to consider ways to improve localism by better enforcing the *quid pro quo* between the nation's broadcasters and the public. The Notice addressed many of the questions raised by earlier, dormant proceedings dating from years before. Today's Localism Notice asks more questions and tees up meritorious ideas—but again my question: why the rush to vote more consolidation now, consolidation that has been the bane of localism, and why put off systematic actions to redress the harms consolidation has inflicted?

Our FCC cart is ahead of our horse. Before allowing Big Media to get even bigger—and to start the predictable cycle of layoffs and downsizing that is the inevitable result of, indeed the economic rationale for, many types of mergers—we should be enforcing clear obligations for each and every FCC licensee.

### Conclusion

Those who look for substantive action on these important issues concerning localism and minorities will look in vain, I predict, once the majority works its way on cross ownership. We are told that we cannot deal with localism and minority ownership because that would require *delay*. But these questions have been before the Commission for almost a decade—and they have been ignored year after year. These issues could have been—should have been—teed up years ago. We begged for that in 2003 when we sailed off on the calamitous rules proposed by Chairman Powell and pushed through in another mad rush to judgment. Don't tell me it can't be done. It should have been done years ago. And we had the chance again this time around. Now, because of a situation not of Commissioner Adelstein's or my making, we are accused of delaying just because we want to make things better before the majority makes them far worse. I see.

When I think about where the FCC has been and where it is today, two conclusions:

First, the consolidation we have seen so far and the decision to treat broadcasting as just another business has *not* produced a media system that does a better job serving most Americans. Quite the opposite. Rather than reviving the news business, it has led to *less* localism, *less* diversity of opinion and ownership, *less* serious political coverage, *fewer* jobs for journalists, and the list goes on.

Second, I think we have learned that the purest form of commercialism and high quality news make uneasy bedfellows. As my own hero, Franklin Delano Roosevelt, put it in a letter to Joseph Pulitzer, "I have always been firmly persuaded that our newspapers cannot be edited in the interests of the general public from the counting room." So, too, for broadcast journalism. This is not to say that good journalism is incompatible with making a profit—I believe that both interests can and must be balanced. But when TV and radio stations are no longer required by law to serve their local communities, and are owned by huge national corporations dedicated to cutting costs through economies of scale, it should be no surprise that, in essence, viewers and listeners have become the products that broadcasters sell to advertisers.

We could have been—should have been—here today lauding the best efforts of government to reverse these trends and to promote a media environment that actually strengthens American democracy rather than weakens it. Instead, we are marking not just a lost opportunity but the allowance of new rules that head media democracy in exactly the wrong direction.

I take great comfort from the conclusion of another critic of the current media system, Walter Cronkite, who said, "America is a powerful and prosperous nation. We certainly should insist upon, and can afford to sustain, a media system of which we can be proud."

Now it's up to the rest of us. The situation isn't going to repair itself. Big media is not going to repair it. This Commission is not going to repair it. But the people, their elected representatives, and attentive courts *can* repair it. Last time the Commission went down this

road, the majority heard and felt the outrage of millions of citizens and Congress and then the court. Today's decision is just as dismissive of good process as that earlier one, just as unconcerned with what the people have said, just as heedless of the advice of our oversight committees and many other Members of Congress, and just as stubborn—perhaps even more stubborn—because this time it knows, or should know, what's coming. Last time a lot of insiders were surprised by the country's reaction. This time they should be forewarned. I hope, I really hope, that today's majority decision will be consigned to the fate it deserves and that one day in the not too distant future we can look back upon it as an aberration from which we eventually recovered. We have had a dangerous, decades-long flirtation with media consolidation. I would welcome a little romance with the public interest for a change.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN  
CONCUR IN PART, DISSENT IN PART**

*Re: Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking.*

After four and a half years, during three of which the Commission did nothing on this proceeding, today we finally adopt this *Report and Notice of Proposed Rulemaking*. Regrettably, it merely recites the issues of public concern, repackages previous Commission actions, and proffers yet another set of proposals. There are no final rules – nothing concrete to foster a better relationship between broadcast licensees and the public they are licensed to serve.

Today's item literally does nothing meaningful to promote localism. It is as if we promised to deliver a book but produced only the cover. While some may contend that this *Report and Notice* is the conclusion of the 2003 localism proceeding, in meeting the Commission's commitment to Congress and the American people, it is really only the beginning. We have not met the demand from leading members of Congress that we conclude our localism proceeding before acting on media ownership.

When the Localism Task Force was launched, we were promised "rigorous studies" and legislative recommendations. We have seen neither studies nor any recommendations to Congress. After the expenditure of over \$350,000 of taxpayer funds and valuable staff resources, the Task Force – if it still exists – owes the American people and Congress completed studies and solid recommendations on which to base immediate action by the Commission and Congress.

We heard from citizens at hearings across the country that there is a real urgency to improve the responsiveness of local broadcast stations to the needs, interests, tastes and values of local communities. Rather than a serious effort to address these concerns, the localism proceeding from its inception in 2003 appears to have been a political tactic – a means to deflect attention away from the fact that the Commission, in spite of strong public and congressional opposition, had just passed the most reckless set of media ownership rules in history. Sadly, today the Commission is paving the same road towards consolidation. This localism proceeding continues to be used as political cover for the Commission to weaken broadcast ownership rules and permit more media consolidation. Make no mistake, the only real actions we are taking today will undercut localism, diversity and competition.

I concur in part to this *Report and Notice* because – in word, if not in deed -- it represents a shift from the Commission's earlier miscalculation that market forces alone will ensure broadcasters promote quality local news, local artists, and informative local political and civic affairs programming. For over a quarter century, the Commission has outsourced its obligation to ensure that broadcasters will address the programming needs and interests of the people in their communities of license. Today, we take a small step towards correcting the Commission's past failings that produced a regulatory environment that limited citizen involvement and participation, provided broadcasters with virtually no guidance, and expected little, if any, accountability.



We learned from our localism hearings that there is far too little coverage of local issues voters need to know about in a way that prepares them to make educated decisions. We heard that “breaking news” is being replaced with “breaking gossip.” In community after community, we heard from citizens that serious coverage of local and state government has diminished. In many respects, there was a virtual blackout of coverage of state and local elections. And while networks and stations say they have to slash news resources, some were offering up to one million dollars for an interview with Paris Hilton. Real investigative journalism and thoughtful reporting have given way to an “if it bleeds, it leads” mentality.

Sadly, today, quality journalism is too often sacrificed to meet quarterly earnings numbers for Wall Street. Owners of multiple media outlets lose incentive to invest in independent and competitive news operations in the same market. The Commission’s own study, which was originally buried until Senator Boxer demanded that the FCC publicly release it, shows that locally owned TV stations provide more local news. And while the Commission has failed to complete a similar study of radio, we have heard across the country that homogenized playlists and payola are shutting out local musicians, and unmanned radio stations have replaced local DJs.

Historically, the Commission had looked for ways to promote localism in broadcasting to ensure that broadcasters were accountable and serving the public interest. Since the 1980s, however, the Commission has gutted those protections and embarked on a destructive path to treat television like “a toaster with pictures.”

With the encouragement of the broadcasting industry, the Commission has systematically removed the public from meaningful points of interaction between broadcasters and the communities that they are licensed to serve. For example, broadcast stations are permitted to maintain main studios and their public files well beyond communities of license, so the public cannot effectively monitor the programming of local broadcasters. Today, few broadcasters have citizen agreements with local community organizations. Few broadcasters hold meetings with members of the community to determine the community’s interests and needs. Enforceable public interest obligations that required broadcasters to maintain logs of programming that are responsive to local, civic, national or religious concerns have been decimated. And, the once-substantive license renewal process conducted by the FCC has been ratcheted down to a postcard, rubber-stamp process.

The end result is that today many stations are unattended and operated from remote locations, residents are discouraged from monitoring a station’s performance, and dialogue between the station and its community is often non-existent. Simply put, the FCC has failed to protect the interests of the American people.

While few Americans are familiar with the term “localism,” most understand that providing “local” service to a “local” community is the essential purpose of broadcast radio and TV. Broadcasting in America is and will always be a local medium. Many broadcasters understand that and often deliver critical service to local communities. Even today, the FCC continues to license valuable public airwaves – for free – to broadcasters, in exchange for service to local communities. Localism is, therefore, the central obligation of every broadcast licensee to air programming that is relevant and responsive to the local community’s interests, tastes and needs. As this Commission moves forward in the proceeding, it is important that we remember

that localism is the cornerstone of American broadcasting and the Commission has an unquestionable obligation to protect the needs and interests of local communities.

While there are no new rules established in this Notice, there are proposals worthy of adoption. I fully support the tentative conclusion in this Notice that each licensee should establish a permanent community advisory board. This approach would help broadcasters determine the local needs and interests of their communities, and should be an integral part of a final plan for addressing localism. I also support the Notice's tentative conclusion that specific procedural guidelines for processing broadcasters' license renewal applications. Assessing licensees' local programming performance would provide additional incentive for broadcasters to meet this fundamental obligation. Although I and others will once again encourage the Commission to act immediately on these proposals, one can't help but regard the prospects for quick implementation with a healthy degree of skepticism. If history is any guide, the odds are that the Commission will either neglect to finalize these proposals, or when it comes time to finalize them, they may be so diluted as to render them meaningless.

We need to put the meat in the sandwich we promised to deliver. It is high time we put this notice out for comment, but we should have actually implemented improvements to localism before we completed the media ownership item. Now that the Commission has acted to loosen the media ownership rules, it is all the more imperative we move immediately to implement some of the useful ideas broached here and others that we learn about in the comment period. We are already too late to have done this right.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking.*

In today's cross-platform, convergent mass media environment, ownership may be an imprecise measure of the Commission's major policy goals- competition, diversity, and localism. With the explosion of online news and information, diversity of voices no longer depends solely on the number of broadcasting companies or media outlets in a certain DMA. The Internet allows residents of even the smallest towns, with perhaps only one daily newspaper, to have access to hundreds of news outlets, twenty-four hours a day. In terms of purely local news and information, the opportunities for resource-sharing and capital investment that occur when a broadcaster purchases a newspaper, in fact often lead to more local news—not less. Specifically, three of the studies commissioned by the FCC in our media ownership proceeding, which were based on actual evidence from various areas of the country, showed that cross-ownership of broadcast and newspaper results in *more* local news.

However, as public servants we hold positions of public trust, and it is our responsibility to take heed of the public interest. Over the past four years, from October 2003 to October 2007, the FCC heard from citizens across this entire country, during 6 localism hearings in which hundreds of thousands of comments were compiled. Overwhelming concern about the lack of what is generally known as “localism” was expressed. This concept of “localism” has come to mean many things to many people. Historically, the FCC sought to preserve what we believe is true “localism,” by imposing public interest obligations on broadcasters, making license renewals contingent on fulfilling these obligations, and protecting the rights of local stations to air “programming that is responsive to the needs and interests of their local communities of license.”

In addition, many local broadcasters already seek regular public input and provide substantial hours each week for local programming, ostensibly based on dialogue with their local communities. In my hometown, *The Tennessean* announced just last week that it is forming several advisory groups to help better understand the news and information needs of the local community. Some of these groups will be organized by geography and some by subject. Much of the groups' discussions will take place online, allowing advisory group members to participate more easily, at any time and any place they are available. *The Tennessean* is also convening a group of local citizens with specific expertise in areas like urban planning, accounting, and the law, to provide advice on how to broaden and deepen their investigations and reporting.

In addition, local Tennessee broadcasters have also demonstrated interest in the needs of the community. They have hosted numerous debates—most recently in our mayoral election – and local political experts have regular shows to discuss issues facing the community. As a state official, I often participated in these “open mic” sessions in order to discuss consumer protection issues such as phone scams, or to educate our citizens on new programs like the Do Not Call or Do Not Fax registries.

The FCC should encourage local broadcasters to continue these practices and require those that do not, to start. However, I also think it is important for local news outlets to establish processes that work best in their own communities, rather than being forced to implement an edict from Washington, DC.

In addition to these outreach measures broadcasters have undertaken to connect with their local community, the FCC just last month passed an order requiring that all television broadcasters make their public inspection files available online. This will allow citizens to get information about a broadcaster's community service efforts with just the click of a mouse, and will also save broadcasters time and energy in responding to in-person requests for station information.

The FCC has also expedited the settlement window for low power FM applications and continues to resolve pending applications to further their construction and broadcasting to local communities. This promotes a community presence which can provide daily locally produced programming at costs far below those of starting a full-power broadcasting station. I hope this will not only impact localism, but also provide opportunities for female and minority ownership.

Despite all that broadcasters are already doing, and the new requirements we impose today, this Order should not be viewed as a final step, but a progression. The Commission is **always** seeking public input and listening to public comment regarding how local broadcasters are meeting their goals. The use of the public's airwaves comes with weighty responsibilities and I will continue to encourage the furtherance of the goals of competition, diversity, and localism.

Thank you to all those citizens in every corner of America who have voiced their opinions on how to best achieve these goals, especially those in Charlotte, San Antonio, Rapid City, Monterey, Portland, and right here in Washington, D.C., both experts and laypersons. Thank you especially to those individuals who have served on our Localism Task Force during Chairman Powell's tenure, particularly co-chairs Michele Ellison and Robert Ratcliffe. Thank

you also to the Media Bureau staff for organizing our localism hearings, and for continuing to focus our attention on what has been a cornerstone of broadcast regulation for decades.

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL  
CONCURRING IN PART**

*Re: Broadcast Localism, Report on Broadcast Localism and Notice of Proposed Rulemaking.*

I support today's report, which provides a comprehensive overview of the issues raised by commenters, and the public at our field hearings regarding how broadcasters address the needs of their local communities. In reaction to their data and opinions, today we decide to make some improvements. Specifically, in the report we commit to:

- better inform the public about our broadcast renewal process;

- encourage our Diversity Committee to work with industry trade associations to learn of emerging ownership opportunities, and to create educational conferences regarding broadcast transactions; and
- investigate technical options for potential radio applicants to find available FM spectrum.

I am pleased that we are moving forward to encourage public participation in our license renewal process, and providing opportunities for people of color and women to learn more about emerging broadcast transactions, as well as access to more FM spectrum.

I have concerns, however, about the Notice of Proposed Rulemaking. There, we tentatively conclude that broadcast licensees should convene permanent advisory boards made up of community officials and leaders to help the licensees ascertain the programming needs of the community. We also tentatively conclude that the Commission should adopt processing guidelines, such as minimum percentages to ensure that stations produce a certain amount of locally-oriented programming.

As I noted when the majority adopted the Enhanced Disclosure order at last month's agenda meeting, the Commission eliminated ascertainment requirements for television and radio stations in 1984 after a thorough examination of the broadcast market. Today, we are again heading back in time -- in the wrong direction. Vigorous competition motivates broadcasters to serve their local communities. I do not believe that government needs to, or should, foist upon local stations its preferences regarding categories of programming. We risk treading on the First Amendment rights of broadcasters with unnecessary regulation. An order reflecting these conclusions will be overturned in court.

Finally, I am also concerned about the tentative conclusion that we should grant Class A status to certain LPTV stations. While this idea may be beneficial, the conclusion is premature without closer examination. Accordingly, I concur with the NPRM section of today's item, and look forward to reviewing these issues carefully after receiving public comment.